112 433

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 285.

GEORGE W. MIDDLETON, PLAINTIFF IN ERROR,

vs.

THE INHABITANTS OF THE TOWNSHIP OF MULLICA, COUNTY OF ATLANTIC.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED SEPTEMBER 2, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 285.

GEORGE W. MIDDLETON, PLAINTIFF IN ERROR,

vs.

THE INHABITANTS OF THE TOWNSHIP OF MULLICA, COUNTY OF ATLANTIC.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

INDEX.

	Original.	Print.
Citation	1	1
Writ of error	1¼	1
Bond	2	2
Declaration	5	3
Copy of bonds	29	11
Plea of defendants	35	13
Reply	38	14
Demurrer overruled	39	14
Plea of defendants	40	15
Motion to strike off pleas granted	50	18
Trial	50	18
Verdict	51	18
Judgment	53	19
Order for substitution of attorneys	55	19
Bill of exceptions	56	20
Testimony of E. T. McKean	57	20
W. P. Gallagher	58	20
G. W. Middleton	59	21
Clerk's certificate	63	22

1 THE UNITED STATES OF AMERICA, *ss:*

To the Inhabitants of the Township of Mullica, County of Atlantic, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of New Jersey, in the third circuit, wherein George W. Middleton is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand, this 16th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

W. McKENNAN, *Cir. Judge.*

Due service of this citation is acknowledged by—

ALDEN C. SCOVEL,
Attorney pro Defendants in Error.

Endorsed: Supreme Court U. S. 1881, October term. No. 890. Geo. W. Middleton, pl'ff in error, *vs.* Inhabitants of Township of Mullica, &c. Citation and proof of service. Filed 2 Sept., 1881. George W. Middleton *vs.* The Inhabitants of the Township of Mullica, County of Atlantic. Citation. Grey, Wilson, F. Carroll Brewster, *pro* pl'ff in error.

1¼ UNITED STATES, *District of New Jersey,* } *Sct.:*

The President of the United States to the judges of the circuit court of the United States, in and for the district of New Jersey, Greeting:

[SEAL.]

Because, that in the record and process, and also in the rendering of judgment, in a suit before you, between George W. Middleton, plaintiff, and The Inhabitants of the Township of Mullica, County of Atlantic, defendants, in a plea of debt, a manifest error has intervened, to the great damage of the said George W. Middleton, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Honorable the Justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Trenton, this twenty-first day of April, A. D. one thousand eight hundred and eighty-one, and

in the one hundred and fifth year of the Independence of the said United States.

S. D. OLIPHANT,
Clerk of Circuit Court U. S.

1½ Endorsed: George W. Middleton, plaintiff in error and plaintiff below, *vs.* The Inhabitants of the Township of Mullica, County of Atlantic, defendants in error and defendants below. Writ of error from Supreme Court U. S. to the circuit court of U. S. for the district of New Jersey, in the 3d circuit, to remove record, &c., Middleton *vs.* The Inhabitants of the Township of Mullica, County of Atlantic, to March term, 1871. No. 35. Grey, Wilson, F. Carroll Brewster, *pro* pl'f in error.

2 *Bond Sur Writ of Error to Supreme Court of United States.*

Circuit Court U. S., March Term, 1871, District of New Jersey.

GEORGE W. MIDDLETON
vs.
THE INHABITANTS OF THE TOWNSHIP OF MULLICA, COUNTY OF ATLANTIC.

Know all men by these presents, that we, George W. Middleton, residing at 1605 Oxford street, in the city of Philadelphia, and William Brice and Cornelius J. Miller, residing (at) in the city of Philadelphia, State of Pennsylvania, are held and firmly bound unto the The Inhabitants of the Township of Mullica, County of Atlantic, State of New Jersey, in the full and just sum of one thousand dollars, to be paid to the said The Inhabitants of the Township of Mullica, County of Atlantic, State of New Jersey, their certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and
3 administrators, jointly and severally, by these presents.

Sealed with our seals, dated the 25th day of April, in the year of our Lord one thousand eight hundred and eighty-one (1881.)

Whereas, lately, at a circuit court of the United States in and for the district of New Jersey, in a suit depending in said court between the said George W. M. Middleton, plaintiff, and the Inhabitance of the Township of Mullica, County of Atlantic, defendants, judgment was rendered against the said George Middleton, and the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Inhabitants of the Township of Mullica, County of Atlantic, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, the second Monday of October next.

4 Now, the condition of the above obligation is such, that if the said George W. Middleton shall prosecute his writ of error to effect, and answers all damages if he fails to make his plea

good, then the above obligation to be void, else to remain in full force and virtue.

GEORGE W. MIDDLETON. [L. S.]
WILLIAM BRICE. [L. S.]
CORNELIUS J. MILLER. [L. S.]

Sealed and delivered in the presence of—
SAMUEL BELL, *U. S. Commissioner.*

Endorsed: C. C. of U. S., Dist. of N. J. Middleton *vs.* Mullica. Bond *sur* writ of error to Supreme Court of United States. Filed April 27, 1881. S. D. Oliphant, clerk, &c. A writ of error in the within stated case is hereby allowed to the Supreme Court of the United States, and the within bond and sureties are approved. W. McKennan, cir. judge. Ap'l 25, 1881.

5 *Judgment.*

United States Circuit Court, District of New Jersey.

GEORGE W. MIDDLETON
vs.
THE INHABITANTS OF THE TOWNSHIP OF MULLICA, IN THE COUNTY OF ATLANTIC.
} In Debt. Judgment on Verdict.

Samuel Grey, attorney.

As yet, of the third day of July, in the year of our Lord eighteen hundred and seventy-one.

W. McKENNAN, Esquire, *Judge.*

Witness:
S. D. OLIPHANT, *Clerk.*

Circuit Court of the United States, District of New Jersey.

DISTRICT OF NEW JERSEY, *ss:*

"The Inhabitants of the Township of Mullica, in the County of Atlantic," a corporation existing under and by virtue of the laws of the State of New Jersey, and usually doing their business in said State, the defendants in this suit were summoned to answer
6 unto George W. Middleton, a citizen of the State of Pennsylvania, the plaintiff in this suit, of a plea that they render unto him the sum of ten thousand dollars, which unto him they owe and from him unjustly detain. And thereupon the said plaintiff, by James Wilson, his attorney, complains, for that whereas the said defendants being thereunto duly authorized and empowered by the laws of said State of New Jersey, heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica, in the county of Atlantic, in said State of New Jersey, did, by the name of the township of Mullica, county of Atlantic, by their certain writing obligatory, by them made and executed, sealed with their seal, and marked and numbered 146, and to the court here now shown, the date whereof is the day and year aforesaid, and a true copy whereof is hereto annexed,

acknowledged themselves indebted unto Samuel Crowley, who was then and there the agent of the defendants, for the purpose of assisting them in passing away and transferring said bond to
7 raise money thereon for the use and benefit of the defendants, in the sum of one thousand dollars, lawful money of the United States, which sum they thereby promised to pay to the said Samuel Crowley, or to his order, two years after the date thereof, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden. And the defendants, having so made and executed said bond, afterwards, to wit, on the sixteenth day of January, in the year eighteen hundred and sixty-five, at Philadelphia, in said State of Pennsylvania, delivered said bond to the plaintiff; and the said Samuel Crowley, as agent of the defendants as aforesaid, and being by them thereto duly authorized and requested, then and there endorsed said bond, and thereby in writing appointed said sum of money therein mentioned to be paid to the plaintiff.

And so far that whereas the said defendants, being thereunto duly authorized and empowered by the laws of said State of New Jersey heretofore, to wit, on the thirty-first day of December,
8 in the year eighteen hundred and sixty-four, at the township of Mullica, in the county of Atlantic, in said State of New Jersey, did, by the name of the township of Mullica, county of Atlantic, by their certain other writing obligatory, by them made and executed, sealed with their seal, and marked and numbered 147, and to the court here now shown, the date whereof is the day and year aforesaid, and a true copy whereof is hereto annexed, acknowledged themselves indebted unto Samuel Crowley, who was then and there the agent of the defendants, for the purpose of assisting them in passing away and transferring said bond to raise money thereon for the use and benefit of the defendants, in the sum of one thousand dollars, lawful money of the United States, which sum they thereby promised to pay to the said Samuel, or to his order, two years after the date thereof, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden. And the defendants having so made and executed said bond afterwards, to wit, on the sixteenth day of January, in the year eighteen
9 hundred and sixty-five, at Philadelphia, in said State of Pennsylvania, delivered said bond to the plaintiff; and the said Samuel Crowley, as agent of the defendants as aforesaid, and being by them thereto duly authorized and requested, then and there endorsed said bond, and thereby in writing appointed said sum of money therein mentioned to be paid to the plaintiff.

And also for that whereas the said defendants being thereunto duly authorized and empowered by the laws of said State of New Jersey heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica, in the county of Atlantic, in said State of New Jersey, did, by the name of the township of Mullica, county of Atlantic, by their certain other writing obligatory, by them made and executed, sealed with their seal, and marked and numbered 148, and to the court here

now shown, the date whereof is the day and year aforesaid, and a true copy whereof is hereto annexed, acknowledge themselves indebted unto Samuel Crowley, who was then and there the agent of the defendants, for the purpose of assisting them in passing
10 away and transferring said bond to raise money thereon for the use and benefit of the defendants, in the sum of one thousand dollars lawful money of the United States, which sum of money they thereby promised to pay to the said Samuel, or to his order, two years after the date thereof, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden. And the defendants having so made and executed said bond afterwards, to wit, on the sixteenth day of January, in the year eighteen hundred and sixty-five, at Philadelphia, in said State of Pennsylvania, delivered said bond to the plaintiff; and the said Crowley, as agent for the defendants as aforesaid, and being thereto by them duly authorized and requested, then and there endorsed said bond, and thereby in writing appointed said sum of money therein mentioned to be paid to the plaintiff.

And also, for that whereas the said defendants being thereunto duly authorized and empowered by the laws of said State
11 of New Jersey heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica, in the county of Atlantic, in said State of New Jersey, did, by the name of the township of Mullica, county of Atlantic, by their certain other writing obligatory, by them made and executed, sealed with their seal and marked and numbered 149, and to the court here now shown, the date whereof is the day and year aforesaid, and a true copy whereof is hereto annexed, acknowledged themselves indebted unto Samuel Crowley, who was then and there the agent of the defendants, for the purpose of assisting them in passing away and transferring said bond to raise money thereon for the use and benefit of the defendants, in the sum of one thousand dollars, lawful money of the United States, which sum they thereby promised to pay to the said Samuel, or to his order, two years after the date thereof, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden. The defendants having so made and executed said bond, afterwards, to wit,
12 on the sixteenth day of January, in the year eighteen hundred and sixty-five, at Philadelphia, in said State of Pennsylvania, delivered said bond to the plaintiff; and the said Samuel Crowley, as agent of the defendants as aforesaid, and being by them thereto duly authorized and requested, then and there endorsed said bond, and thereby in writing appointed said sum of money therein mentioned to be paid to the plaintiff.

And also, for that whereas the said defendants being thereunto duly authorized and empowered by the laws of said State of New Jersey heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica, in the county of Atlantic, in said State of New Jersey, did, by the name of the township of Mullica, county of Atlantic, by their certain other writing obligatory, by them made and executed, sealed

with their seal, and marked and numbered 150, and to the court here now shown, the date whereof is the day and year aforesaid, and a true copy whereof is hereto annexed, acknowledge themselves indebted to Samuel Crowley, who was then and there 13 the agent of the defendants, for the purpose of assisting them in passing away and transferring said bond to raise money thereon for the use and benefit of the defendants, in the sum of one thousand dollars, lawful money of the United States, which sum they thereby promised to pay to the said Crowley, or to his order, two years after the date thereof, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden. And the defendants having so made and executed said bond, afterwards, to wit, on the sixteenth day of January, in the year eighteen hundred and sixty-five, at the city of Philadelphia, in said State of Pennsylvania, delivered said bond to the plaintiff; and the said Cowley, as agent of the defendants as aforesaid, and being by them thereto duly authorized and requested, then and there endorsed said bond, and thereby in writing appointed said sum of money therein mentioned to be paid to the plaintiff.

And also, for that whereas the said defendants being there- 14 unto duly authorized and empowered by the laws of the said State of New Jersey heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica, in the county of Atlantic, in said State of New Jersey, did, by the name of the township of Mullica, county of Atlantic, by their certain other writing obligatory, by them made and executed, sealed with their seal and marked and numbered 145, and to the court here now shown, the date whereof is the day and year aforesaid, and a true copy whereof is hereto annexed, acknowledge themselves indebted unto Samuel Crowley, who was then and there the agent of the defendants, for the purpose of assisting them in passing away and transferring said bond to raise money thereon for the use and benefit of the defendants, in the sum of five hundred dollars, lawful money of the United States, which sum they thereby promised to pay to the said Crowley, or to his order, one year after the date thereof, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden. And the 15 defendants, having so made and executed said bond, afterwards, to wit, on the sixteenth day of January, in the year eighteen hundred and sixty-five, at the city of Philadelphia, in said State of Pennsylvania, delivered said bond to the plaintiff; and the said Crowley, as agent of the defendants, as aforesaid, and being by them thereto duly authorized and requested, then and there endorsed said bond, and thereby, in writing, appointed said sum of money therein mentioned to be paid to the plaintiff.

By means of which said several premises the plaintiff became entitled to have and receive from the defendants the said sums of money in the said several bonds mentioned, with interest, according to the tenor and effect of said bonds, being parcel of the sum above demanded.

Yet the defendants, altho' often requested so to do, and altho' the

interest upon said bonds, at the times when the same became due and payable, was duly demanded at the said State Bank at Camden, to wit, at the city of Camden, in the county of Camden and
16 State of New Jersey, have not as yet paid the said moneys in said bonds mentioned, or any part thereof, to the plaintiff, but have hitherto refused, and still do refuse, so to do.

And also, for that whereas the defendants, being by the laws of said State of New Jersey thereto authorized and empowered, heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica aforesaid, in said State of New Jersey, by the name of township of Mullica, county of Atlantic, did, by Timothy Henderson, president, and Edward T. McKean, clerk of the township committee of said township, the then duly authorized agents of the defendants in that behalf, make their certain township order, bearing date on the day and year last aforesaid, the same being in writing and containing an agreement for the payment of money, as herein stated, a true copy of which order is hereto annexed, and thereby then and there promised to pay, two years after the date thereof, unto Samuel Crowley, or to his order, he, the said Crowley, being then and there the agent of the defendants, for the purpose of assisting them in pass-
17 ing away said order and raising money thereon for the use and benefit of the defendants, the sum of one thousand dollars, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden; and having so made said order, the defendants then and there delivered the same to the plaintiff; and the said Samuel, as agent of the defendants as aforesaid, and being thereto by them duly authorized and requested, then and there endorsed said order, and thereby ordered and appointed said sum of money therein mentioned to be paid to the plaintiff. And the defendants, by means of the premises, then and there became liable to pay to the plaintiff the said moneys in said order mentioned, according to the tenor and effect thereof.

And also, for that whereas the defendants, being by the laws of said State of New Jersey thereto duly authorized and empowered, heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica aforesaid, in said State of New Jersey, by the name of the town-
18 ship of Mullica, county of Atlantic, did, by Timothy Henderson, president, and Edward T. McKean, clerk of the township committee of said township, the then duly authorized agents of the defendants in that behalf, make their certain other township order, bearing date on the day and year last aforesaid, the same being in writing and containing an agreement for the payment of money, as herein stated, a true copy of which order is hereto annexed, and thereby then and there promised to pay, two years after the date thereof, unto Samuel Crowley, or to his order, he, the said Crowley, being then and there the agent of the defendants, for the purpose of assisting them in passing away said order and raising money thereon for the use and benefit of the defendants, the sum of one thousand dollars, with interest at the rate of six per cent. per an-

num, payable annually at the State Bank at Camden; and having so made said order, the defendants then and there delivered the same to the plaintiff; and the said Samuel, as agent of the defendants as aforesaid, and being thereto by them duly authorized and
19 requested, then and there endorsed said order, and thereby ordered and appointed said sum of money therein mentioned to be paid to the plaintiff. And the defendants, by means of the premises, then and there became liable to pay to the plaintiff the said moneys in said order mentioned, according to the tenor and effect thereof.

And also, for that whereas the defendants, being by the laws of said State of New Jersey thereto duly authorized and empowered, heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica aforesaid, in said State of New Jersey, by the name of the township of Mullica, county of Atlantic, did, by Timothy Henderson, president, and Edward T. McKean, clerk of the township committee of said township, the then duly authorized agents of the defendants in that behalf, make their certain other township order, bearing date on the day and year last aforesaid, the same being in writing and containing an agreement for the payment of money, as herein stated, a true copy of which order is hereto annexed, and thereby then
20 and there promised to pay, two years after the date thereof, unto Samuel Crowley, or to his order, the said Samuel Crowley being then and there the agent of the defendants for the purpose of assisting them in passing away said order and raising money thereon for the use and benefit of the defendants, the sum of one thousand dollars, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden; and having so made said order, the defendants then and there delivered the same to the plaintiff; and the said Crowley, as agent of the defendants as aforesaid, and being thereto by them thereto duly authorized and requested, then and there endorsed said order, and thereby ordered and appointed said sum of money therein mentioned to be paid to the plaintiff. And the defendants, by means of the premises, then and there became liable to pay to the plaintiff the said moneys in said order mentioned, according to the tenor and effect thereof.

And also, for that whereas the defendants, being by the laws of said State of New Jersey thereto duly authorized and empowered, heretofore, to wit, on the thirty-first day of December, in the
21 year eighteen hundred and sixty-four, at the township of Mullica aforesaid, in said State of New Jersey, by the name of the township of Mullica, county of Atlantic, did, by Timothy Henderson, president, and Edward T. McKean, clerk of the township committee of said township, the then duly authorized agents of the defendants in that behalf, make their certain other township order, bearing date on the day and year last aforesaid, the same being in writing and containing an agreement for the payment of money, as herein stated, a true copy of which order is hereto annexed, and thereby then and there promised to pay, two years after the date thereof, unto Samuel Crowley, or to his order, he, the said

Crowley, being then and there the agent of the defendants for the purpose of assisting them in passing away said order and raising money thereon for the use and benefit of the defendants, the sum of one thousand dollars, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden; and having so made said order, the defendants then and there delivered the same to the plaintiff; and the said Crowley, as agent of the defendants as aforesaid, and being thereto by them duly authorized and requested, then and there endorsed said order, and thereby ordered and appointed said sum of money therein mentioned to be paid to the plaintiff. And the defendants, by means of the premises, then and there became liable to pay to the plaintiff the said moneys in said order mentioned, according to the tenor and effect thereof.

22

And also, for that whereas the defendants, being by the laws of the State of New Jersey thereto duly authorized and empowered, heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica, as aforesaid, in said State of New Jersey, by the name of the township of Mullica, county of Atlantic, did, by Timothy Henderson, president, and Edward T. McKean, clerk, of the township committee of said township, the then duly authorized agents of the defendants in that behalf, make their certain other township order, bearing date on the day and year last aforesaid, the same being in writing, and containing an agreement for the payment of money as herein stated, a true copy of which order is hereto annexed, and thereby then and there promised to pay, two years after the date thereof, unto Samuel Crowley, or to his order, he, the said Samuel, being then and there the agent of the defendants, for the purpose of assisting them in passing away said order and raising money thereon for the use and benefit of the defendants, the sum of one thousand dollars, with interest at the rate of six per cent. per annum, payable annually at the State Bank at Camden; and having so made said order, the defendants then and there delivered the same to the plaiiff; and the said Samuel, as agent of the defendants as aforesaid, and being thereto by them duly authorized and requested, then and there endorsed said order, and thereby ordered and appointed said sum of money therein mentioned to be paid to the plaintiff. And the defendants, by means of the premises, then and there became liable to pay to the plaintiff the said moneys in said order mentioned, according to the tenor and effect thereof.

23

And also, for that whereas the defendants, being by the laws of said State of New Jersey duly authorized and empowered thereto, heretofore, to wit, on the thirty-first day of December, in the year eighteen hundred and sixty-four, at the township of Mullica aforesaid, in said State of New Jersey, by the name of the township of Mullica, county of Atlantic, did, by Timothy Henderson, president, and Edward T. McKean, clerk of the township committee of said township, the then duly authorized agents of the defendants in that behalf, make their certain township order, bearing date on the day and year last aforesaid, the same being in writing

24

and containing an agreement for the payment of money as herein stated, a true copy of which order is hereto annexed, and thereby then and there promised to pay, one year after the date thereof, unto Samuel Crowley, or to his order, he, the said Samuel, being then and there the agent of the defendants, for the purpose of assisting them in passing away said order and raising the money thereon
for the use and benefit of the defendants, the sum of five
25 hundred dollars, with interest at the rate of six per cent. per
annum, payable annually at the State Bank in Camden; and having so made said order, the defendants then and there delivered the same to the plaintiff; and the said Samuel, as agent of the defendants as aforesaid, and being thereto by them duly authorized and requested, then and there endorsed said order, and thereby ordeaed and appointed said sum of money therein mentioned to be paid to the plaintiff. And the defendants, by means of the premises, then and there became liable to pay to the plaintiff the said moneys in said order mentioned, according to the tenor and effect thereof.

And the plaintiff saith that, altho' the said moneys in said several orders specified have long since become due and payable, and altho' said orders were, at the several times when the interest thereon became due and payable, duly presented at the said State Bank at Camden, at the city of Camden aforesaid, and payment of said interest was then and there duly demanded, yet the defendants
26 have not paid the said moneys, or any part thereof, to the
plaintiff, but have hitherto refused, and still do refuse, so to do. Whereby an action hath accrued to the plaintiff to demand and have of the defendants the said moneys in said orders mentioned, parcel of the sum above demanded. And whereas also the said defendants afterwards, to wit, on the first day of June, in the year eighteen hundred and seventy-one, at the township of Mullica, in the county of Atlantic, in the State of New Jersey aforesaid, were indebted to the said plaintiff in the sum of ten thousand dollars, for money by the said plaintiff, before that time, lent and advanced to, and paid, laid out, and expended for, the said defendants, at their special instance and request; and also in the further sum of ten thousand dollars, for other money by the said defendants before that time had and received to and for the use of the said plaintiff; and also in the further sum of ten thousand dollars, for
so much money before that time and then due and payable
27 from the defendants to the plaintiff, for interest upon and for
the forbearance of divers large sums of money before then lent and advanced by the said plaintiff to said defendants, at their special instance and request, and by the plaintiff forborne to the defendants for divers long spaces of time before then elapsed, at the like special instance and request of the defendants; and also for other moneys, before that time and then, due and payable from the defendants to the plaintiff, for interest upon and for the forbearance of divers other large sums of money before then due and owing from the defendants to the plaintiff, and by the plaintiff forborne to the defendants for divers long spaces of time before then elapsed, at the like special instance and request of the defendants; and the

said several sums in this count mentioned being to be paid to the plaintiff by the defendants when they should be thereto afterwards requested. Whereby and by reason of the said last-mentioned sums being and remaining wholly unpaid, an action hath accrued
28 to the plaintiff to demand and have of and from the defendants the said sum of money in this count mentioned.

Yet the defendants, tho' often requested, have not paid to the plaintiff the said moneys, or any part thereof, but have hitherto refused, and still do refuse, so to do, to the damage of the plaintiff ten thousand dollars; and therefore he brings suit.

29 [Copy.]

United States of America, State of New Jersey.

[Bond No. 146.] Amount, $1,000.

The township of Mullica, county of Atlantic, acknowledge themselves indebted to Samuel Crowley in the sum of one thousand dollars, lawful money of the United States; which sum they promise to pay to the said Samuel Crowley, or to his order, two years after date hereof, with interest at the rate of six per centum per annum, payable annually, the aforesaid sum of one thousand dollars having been borrowed of said Samuel Crowley, by order of said township committee, pursuant to a resolution passed January 1st, 1864; interest payable at the State Bank at Camden.

In witness whereof, the said township committee have caused this bond to be sealed with their seal, and attested by the signatures of their president and clerk, this 31st day of December, A. D. one thousand eight hundred and sixty-four.

[L. S.] EDW'D T. McKEAN, *Clerk.*
TIMOTHY HENDERSON, *President.*

[U. S. Revenue Stamp, 50 cents.]

30 [Copy.]

United States of America, State of New Jersey.

[No. bond, 147.] Amount, $1,000.

The township of Mullica, county of Atlantic, acknowledge themselves indebted to Samuel Crowley in the sum of one thousand dollars, lawful money of the United States; which sum they promise to pay to the said Samuel Crowley, or to his order, two years after the date hereof, with interest at the rate of six per centum per annum, payable annually, the aforesaid sum of one thousand dollars having been borrowed of said Samuel Crowley, by order of said township committee, pursuant to a resolution passed January 1st, 1864; interest payable at the State Bank at Camden.

In witness whereof, the said township committee have caused this bond to be sealed with their seal, and attested by the signatures of their president and clerk, this 31st day of December, A. D. one thousand eight hundred and sixty-four.

[L. S.] EDWARD T. McKEAN, *Clerk.*
TIMOTHY HENDERSON, *President.*

[U. S. Revenue Stamp, 50 cents.]

31 [Copy.]

United States of America, State of New Jersey.

[No. bond, 148.] Amount, $1,000.

The township of Mullica, county of Atlantic, acknowledge themselves indebted to Samuel Crowley in the sum of one thousand dollars, lawful money of the United States; which sum they promise to pay to the said Samuel Crowley, or to his order, two years after the date hereof, with interest at the rate of six per centum per annum, payable annually, the aforesaid sum of one thousand dollars having been borrowed of said Samuel Crowley, by order of said township committee, pursuant to a resolution passed January 1st, 1864; interest payable at the State Bank at Camden.

In witness whereof, the said township committee have caused this bond to be sealed with their seal, and attested by the signatures of their president and clerk, this 31st day of December, A. D. one thousand eight hundred and sixty-four.

[L. S.] EDW'D T. McKEAN, *Clerk.*
TIMOTHY HENDERSON, *President.*

[U. S. Revenue Stamp, 50 cents.]

32 [Copy.]

United States of America, State of New Jersey.

[No. bond, 149.] Amount, $1,000.

The township of Mullica, county of Atlantic, acknowledge themselves indebted to Samuel Crowley in the sum of one thousand dollars, lawful money of the United States; which sum they promise to pay to the said Samuel Crowley, or to his order, two years after the date hereof, with interest at the rate of six per centum per annum, payable annually, the aforesaid sum of one thousand dollars having been borrowed of said Samuel Crowley by order of said township committee, pursuant to a resolution passed January 1st, 1864; interest payable at the State Bank at Camden.

In witness whereof, the said township committee have caused this bond to be sealed with their seal, and attested by the signatures of their president and clerk, this 31st day of December, A. D. one thousand eight hundred and sixty-four.

[L. S.] EDW'D T. McKEAN, *Clerk.*
TIMOTHY HENDERSON, *President.*

[U. S. Revenue Stamp, 50 cents.]

33 [Copy.]

United States of America, State of New Jersey.

[No. bond, 150.] Amount, $1,000.

The township of Mullica, county of Atlantic, acknowledge themselves indebted to Samuel Crowley in the sum of one thousand dollars, lawful money of the United States; which sum they promise to pay to the said Samuel Crowley, or to his order, two years after the date hereof, with interest at the rate of six per centum per annum, payable annually, the aforesaid sum of one thousand dollars having

been borrowed of said Samuel Crowley by order of said township committee, pursuant to a resolution passed January 1st, 1864; interest payable at the State Bank at Camden.

In witness whereof, the said township committee have caused this bond to be sealed with their seal, and attested by the signatures of their president and clerk, this 31st day of December, A. D. one thousand eight hundred and sixty-four.

[L. S.] EDW'D T. McKEAN, *Clerk.*
TIMOTHY HENDERSON, *President.*

[U. S. Revenue Stamp, 50 cents.]

34 [Copy.]

United States of America, State of New Jersey.

[No. bond, 145.] Amount, $500.

The township of Mullica, county of Atlantic, acknowledge themselves indebted to Samuel Crowley in the sum of five hundred dollars, lawful money of the United States; which sum they promise to pay to the said Samuel Crowley, or to his order, one year after the date hereof, with interest at the rate of six per centum per annum, payable annually, the aforesaid sum of five hundred dollars having been borrowed of said Samuel Crowley by order of said township committee, pursuant to a resolution passed January 1st, 1864; interest payable at the State Bank at Camden.

In witness whereof, the said township committee have caused this bond to be sealed with their seal, and attested by the signatures of their president and clerk, this 31st day of December, A. D. one thousand eight hundred and sixty-four.

[L. S.] EDW'D T. McKEAN, *Clerk.*
TIMOTHY HENDERSON, *President.*

[U. S. Revenue Stamp, 50 cents.]

35 And the said defendants, by Alden C. Scovel, their attorney, come and defend the wrong and injury, when, &c., and say that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendants, and they, the said defendants, are not bound by law to answer the same.

And this they are ready to verify. Wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them.

And the said defendants, by Alden C. Scovel, their attorney, come and defend the wrong and injury, when, &c., and say that as to the said first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth counts in the said declaration,

36 and the matters and things therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said desendants; and that the said de-

fendants are not bound by law to answer the same; and this the said defendants are ready to verify. Wherefore, by reason of the insufficiency of the said first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth counts of the said declaration in this behalf, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them, &c.

And for a further plea in this behalf, as to the said last count in said declaration mentioned, by the said plaintiff pleaded, by way of amendment, the said defendants, by their said attorney, come and defend the wrong and injury, when, &c., and say that the said plaintiff, for anything alleged in the said last count, ought not to have or maintain his aforesaid action thereof against the said defend-
37 ants, because, they say, that the said defendants do not owe the said several sums of money in the said last count mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof, in said last count, complained against said defendants; and of this the said defendants put themselves upon the country.

And for a further plea in this behalf, as to the said last count in said declaration mentioned, by the said plaintiff pleaded, by way of amendment, the said defendants, by leave of the court, now here for that purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against the said defendants, because they say that the said several supposed causes of action, in the said last count mentioned, did not, nor did any or either of them, accrue to the said plaintiff at any time within six years next before the commencement of this suit, in man-
38 ner and form as the said plaintiff hath above thereof, in said last count, complained against them, the said defendants; and this the said defendants are ready to verify. Wherefore they pray judgment, if the said plaintiff ought further to have or maintain his aforesaid action thereof against them.

And the said plaintiff saith that the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth counts of his said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient for him to have and maintain his aforesaid action thereof against the said defendants; and the said plaintiff is ready to verify and prove the same, as the court here shall direct and award. Wherefore, inasmuch as the defendants have not answered the said counts, nor hitherto in any manner denied the same, the plaintiff prays judgment, and his said debt, together with his damages, by reason of the detention thereof, to be adjudged to him, &c.

39 And the plaintiff, as to the plea of the defendants by them pleaded to the last count of the said declaration, and whereof they have put themselves upon the country, doth the like, &c.

And as to the further plea of the defendants by them pleaded to the said last count, the plaintiff saith that the said several causes of action in said last count mentioned did accrue to the plaintiff within

six years next before the commencement of this suit, to wit, at the time in the said count mentioned; and this the plaintiff prays may be inquired of by the country, &c.

The demurrer filed by the defendants to the first twelve counts of the plaintiff's declaration in this cause having been argued upon written briefs by Abraham Browning, of counsel with the defendants, and James Wilson, of counsel with the plaintiff, and the court having duly considered the same, and being of opinion that the said demurrer is not well taken, and ought not to be sustained, it is thereupon, this twenty-fourth day of April, in the year eighteen
40 hundred and seventy-seven, on motion of James Wilson, of counsel with the plaintiff, ordered that the said demurrer be, and the same is hereby, overruled, with costs.

And the said defendant[s], The Inhabitants of the Township of Mullica, in the county of Atlantic, by Alden C. Scovel, its attorney, comes and defends the wrong and injury, when, &c.; and as to the said first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth counts of the said declaration, says that the said plaintiff ought not to have or maintain his aforesaid action, because it says that it does not owe the said sums of money therein mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it; and of this it puts itself upon the country.

And for a further plea in this behalf as to the said first, second, third, fourth, fifth, and sixth counts of the said declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case
41 made and provided, says that the said several supposed writings obligatory or bonds in the said first, second, third, fourth, fifth, and sixth counts of said declaration mentioned are not its deeds, nor is any or either of them the deed of the said defendant; and of this it puts itself upon the country.

And for a further plea in this behalf as to the said first, second, third, fourth, fifth, and sixth counts of the said declaration, the said defendant by leave of the court here for this purpose, first had and obtained, according to the form of the statute in such case made and provided, says that it ought not to be charged with the said debt by virtue of the said several supposed writings obligatory or bounds mentioned in said first, second, third, fourth, fifth, and sixth counts of said declaration, because it says that the said The Inhabitants of the Township of Mullica, in the County of Atlantic, the said defendant was not duly authorized and empowered by the laws of the said State of New Jersey to make, execute, and seal the said several supposed writings obligatory or bounds mentioned in said
42 first, second, third, fourth, fifth, and sixth counts of said declaration, or any or either of them, in manner and form as set forth in said first, second, third, fourth, fifth, and sixth counts of said declaration; and of this it puts itself upon the country.

And for a further plea in this behalf as to the said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, the said defendant, by leave of the court here for this purpose first had

and obtained, according to the form of the statute in such case made and provided, says that it ought not to be charged with the said debt by virtue of the said several supposed township orders mentioned in said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, because it says that the said The Inhabitants of the Township of Mullica, in the County of Atlantic, the said defendant, was not authorized and empowered by the laws of the said State of New Jersey to make the said several township orders mentioned in said seventh, eight, ninth, tenth, eleventh, and twelfth counts of said declaration, or any or either of them,
43 in manner and form as set forth in said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, and of this its puts itself upon the country.

And for a further plea in this behalf as to the said first, second, third, fourth, fifth, and sixth counts of said declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that it ought not be charged with the said debt by virtue of the said several supposed writings obligatory or bonds mentioned in said first, second, third, fourth, fifth, and sixth counts of said declaration, because it says that the said several supposed writings obligatory or bonds mentioned in said first, second, third, fourth, fifth, and sixth counts of said declaration were not made, executed, sealed, or issued by any order or authority of a legally called meeting of the voters of the said township of Mullica, in said county of Atlantic; and this the said defendant is ready to verify; wherefore it prays judgment if the said defendant
44 ought to be charged with the said debts by virtue of the said supposed writings obligatory or bonds.

And for a further plea in this behalf as to the said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of the said declaration, the said defendants, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that it ought not to be charged with the said debt by virtue of the said several supposed township orders mentioned in said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, because it says that the said several supposed township orders mentioned in said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration were not made by any order or authority of a legally-called meeting of the voters of the said township of Mullica, in said county of Atlantic; and this the said defendant is ready to verify; wherefore it prays judgment if the said defendant ought to be charged
45 with the said debt by virtue of the said several supposed township orders.

And for a further plea in this behalf as to the said first, second, third, fourth, fifth, and sixth counts of the said declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that it ought not to be charged with the said debt by virtue of the said several supposed writings obligatory or

bonds mentioned in said first, second, third, fourth, fifth, and sixth counts of said declaration, because it says that the said several supposed writings obligatory or bonds mentioned in said first, second, third, fourth, fifth, and sixth counts of said declaration were not ordered to be made, executed, sealed, or issued at a legally-called meeting of the voters of the said township of Mullica by a majority of the voters present at such meeting; and this the said defendant is ready to verify; wherefore it prays judgment if the said defendant ought to be charged with the said debt by virtue of the
46 said several supposed writings obligatory or bonds.

And for a further plea in this behalf as to the seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said defendant ought not to be charged with the said debt by virtue of the said several supposed township orders mentioned in said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, because it says that the said several supposed township orders were not made and issued at a legally-called meeting of the voters of said township of Mullica by a majority of the voters present at such meeting; and this the said defendant is ready to verify; wherefore it prays judgment if the said defendant ought to be charged with said debt by virtue of said several supposed township orders.

47 And for a further plea in this behalf as to the said first, second, third, fourth, fifth, and sixth counts of the said declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said defendant ought not to be charged with the said debt by virtue of the said several supposed writings obligatory or bonds mentioned in said first, second, third, fourth, fifth, and sixth counts of said declaration, because it says that the said several supposed writings obligatory or bonds mentioned in said first, second, third, fourth, fifth, and sixth counts of said declaration were not issued to pay bounties to fill quotas assigned to the said township of Mullica under any call or calls of the President of the United States for men to be mustered into the army or service of the United States; and this the said defendant is ready to verify; wherefore it prays judgment if the said defendant ought to be charged with said debt by virtue of
48 said several supposed writings obligatory or bonds.

And for a further plea in this as to the said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said defendant ought not to be charged with the said debt by virtue of the said several supposed township's orders mentioned in said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, because it says that the said several supposed township orders mentioned in said seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration were

not issued to pay bounties to fill quotas assigned to the said township of Mullica under any call or calls of the President of the United States for men to be mustered into the United States service or army; and this the said defendant is ready to verify; wherefore it prays judgment if the said defendant ought to be charged with
49 said debt by virtue of the said several supposed township orders.

And for a further plea in this behalf as to the said first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration, the said defendants, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against the said defendant, because, it says, that the said several supposed causes of action in the said first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth counts of said declaration mentioned did not, nor did any or either of them, accrue to the said plaintiff at any time within six years next before the commencement of this suit in manner and form as the said plaintiff hath above thereof in said first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh,
50 and twelfth counts complained against it, the said defendant; and this, the said defendant, is ready to verify. Wherefore it prays judgment, if the said plaintiff ought further to have or maintain his aforesaid action thereof against it.

And now, April 9th, 1880, the plaintiff moves to strike off the first, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh pleas. And said motion having been argued by counsel for plaintiff and defendants, and considered by the court, it is ordered that the pleas be stricken off; the plea of *nil debet*, however, to stand, so far as applicable to the counts upon the money orders.

Therefore, let a jury come before the said court at the March term thereof, A. D. eighteen hundred and eighty-one.

And now, at this day, to wit, the sixteenth day of April, A. D. eighteen hundred and eighty-one, in the term aforesaid, come before the said court as well the said plaintiff, by his attorneys, as the said defendants, by their attorneys, and the jurors of the jury
51 being duly summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried, and sworn, and the evidence offered by the parties submitted, and the parties by their counsel being heard, and the judge having charged the jury, and the jury, without leaving the box, considered of their verdict, and being still in court, upon their oaths, say that, as to the first issue within joined between the said parties, that the said "The inhabitants of the township of Mullica, in the county of Atlantic," do not owe to the said George W. Middleton the said sums of money or any or either of them, as the said George W. Middleton hath, in the seventh, eighth, ninth, tenth, eleventh, and twelfth counts of his said declaration in that behalf, alleged.

And as to the second issue within joined between the said parties, the jurors aforesaid, upon their oaths aforesaid, say:

That the writings obligatory or bonds mentioned in the first, second, third, fourth, fifth, and sixth counts in said plaintiff's
52 said declaration are not the deeds, nor is any or either of them the deed of the said The Inhabitants of the Township of Mullica, in the County of Atlantic, as the said George W. Middleton hath, in said first, second, third, fourth, fifth, and sixth counts, in that behalf alleged.

And as to the third issue within joined between the said parties, the jurors aforesaid, upon their oaths aforesaid, say: That the said causes of action in the first twelve counts in said declaration mentioned did not, nor did any or either of them, accrue to the said George W. Middleton at any time within six years next before the commencement of this suit, as the said George W. Middleton hath, in said first twelve counts, in that behalf alleged.

And as to the fourth issue within joined between the said paties, the jurors aforesaid, upon their oaths aforesaid, say: That the said The Inhabitants of the Township of Mullica, in the County of Atlantic, do not owe to the said George W. Middleton the
53 said several sums of money, or any or either of them, as the said George W. Middleton hath, in the last count is his said declaration, in that behalf alleged.

And as to the fifth issue within joined between the said parties, the jurors aforesaid, upon their oaths aforesaid, say: That the said causes of action in the last count in said declaration mentioned did not, nor did any or either of them, accrue to the said George W. Middleton within six years next before the commencement of this suit, as the said George W. Middleton hath, in sâid last count, in that behalf alleged.

Therefore, it is considered that the said George W. Middleton take nothing by his said writ, but that he be in mercy, &c., and that the said The Inhabitants of the Township of Mullica, in the County of Atlantic, do go thereof without day, &c.

And it is further considered by the court, now here before the judges thereof, that the said The Inhabitants of the Township of Mullica, in the County of Atlantic, do recover against the said George W. Middleton the sum one hundred and thirteen
54 dollars and seventy cents, for their costs and charges by them laid out about their defence in this behalf, before the judges thereof, now here adjudged to the said The Inhabitants of the Township of Mullica, in the County of Atlantic, and with their assent, according to the form of the statute in such case made and provided, and that the said defendants have execution thereof.

Judgment signed this sixteenth day of April, A. D. eighteen hundred and eighty-one.

W. McKENNAN, *Cir. J.*

55 *Order for Substitution.*

U. S. Circuit Court, District of New Jersey.

GEORGE W. MIDDLETON
vs.
THE INHABITANTS OF THE TOWNSHIP OF MULLICA. } In Debt.

Ordered by the court that Samuel H. Grey, Esquire, be, and he hereby is, substituted as attorney for the above-named plaintiff *nunc pro tunc*.

Entered Apr. 8, 1881.

On motion of—
JAMES WILSON, *Att'y for Pl'tff.*

Endorsed: U. S. circuit court, dist. of New Jersey. Geo. W. Middleton *vs.* The Inhabitants of the Township of Mullica. In debt. Order for substitution. Filed Apr. 8, 1881, as of Sept. 7, 1880. S. D. Oliphant, clerk.

56 *Bill of Exceptions.*

Be it remembered that in the term of March, A. D. 1871, came George W. Middleton into the circuit court of U. S. for the district of New Jersey and impleaded The Inhabitants of the Township of Mullica, County of Atlantic, in a certain plea of debt, &c., in which the said plaintiff declared (*pro ut narr*) and the said defendant pleaded (*pro ut pleas*). And thereupon issues were joined between them.

And afterwards, to wit, at a session of said court, held at Trenton, before the Honorable William McKennan, circuit judge of the said court, on Tuesday, the 29th day of March, A. D. 1881, the aforesaid issues between the said parties came to be tried by a jury of the said district, for that purpose duly impanelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the said defendant by their respective attorneys: and the jurors of the jury aforesaid impanelled to try the said issues being also called, came and were then and there in due manner chosen and sworn or affirmed
57 to try the said issues, and upon the trial the counsel of the said plaintiff called—

EDWARD T. MCKEAN, who being duly sworn, said:

I now reside in Philadelphia. In 1864 I resided in Mullica township, Atlantic county, New Jersey. I was clerk of the township of Mullica. Timothy Henderson was the president of the township. He was the chairman of the township committee of Mullica township. (The 6 bonds in suit handed to witness.) These bonds all bear my signature as clerk of the township. Timothy Henderson is now dead. These are his signatures on the bonds. I affixed the seals. I recognize Samuel Crowley's signatures on the back of these bonds. I believe the signatures to be his handwriting.

Defendant object to proof of handwriting of Crowley, because the bill of particulars does not show an endorsement of the bonds.

By leave of the court the narr and bill of particulars are amended by adding averments that Crowley endorsed to Gallagher, &
58 Gallagher to plaintiff.

WITNESS: I am acquainted with Crowley's handwriting; to the best of my belief these are his writing.

Cross-examined:

I have seen Crowley write often. I did not see him sign this. I

do not know when he wrote this. I signed as clerk, and, as I presume, at the date of the bonds.

WM. P. GALLAGER, sworn:

These signatures endorsed on five of the bonds are mine.

Cross-examined:

I reside in Philadelphia. I am now book-keeper for Joseph Kelly & Co. I was in the employ of the plaintiff on two occasions; from the year 1857 to 1865, and from 1866 to 1869. I was his book-keeper. In December, 1864, I was in the employ of E. P. Middleton and Brother. I left plaintiff in 1869. I went to plaintiff in September, 1866. In 1864 I was with plaintiff and E. P. Middle-
59 ton. The bonds were assigned to me. When I received them from the plaintiff the assignment to me was written on them. I was then in plaintiff's employ. They were handed to me to commence suit. I paid no consideration for them. That was shortly before I gave them to Mr. Wilson for collection; February 20, 1869. That is the time I gave them to Mr. Wilson. They were handed to me within a month or two of that time. I wrote my name some time after when I transferred them to plaintiff; after suit had been brought in my name. Do not remember when I sued in the supreme court of New Jersey. Cannot say how soon after that I endorsed. I did not endorse after this suit was brought. After I signed plaintiff commenced this suit. The assignment to me was written in full, I think, when plaintiff first handed me the bonds. I am pretty certain it was.

GEORGE W. MIDDLETON, sworn:

I am the plaintiff. These six bonds are my property.
60 I became the owner of them in the early part of 1865 or the last of 1864. I was advised by my counsel, Mr. Wilson, to assign the bonds to Mr. Gallagher to bring suit in the supreme court of this State. All the time the bonds stood in Gallagher's name they were mine.

Cross-examined:

I cannot say in whose handwriting the assignment over Crowley's name is written. I know it was written before the suit was brought in the supreme court. Mr. Wilson or Mr. James Scovill advised it. Gallagher's name was written before this suit was brought. I received these bonds from Samuel Crowley or Timothy Henderson. I think from Crowley. It may have been from Henderson or McKean. To to best of my recollection I received them from Crowley. These bonds are my property. I received them from Crowley the last of 1864 or in the early part of 1865. I cannot say who
61 was present. It was in my store in Philadelphia.

Plaintiff reads from laws of New Jersey, session of 1864, p. 158, ch. 99.

Act of March 4, 1864, (*pro ut.* same.)

And from same book, p. 679, ch. 393. Act of April 8, 1864, (*pro ut.* same.)

Plaintiff offers the six bonds declared on in evidence.

The defendants object that no power has been shown to issue the bonds.

Bonds ruled out.

Plaintiff recalled:

I became the owner of these bonds in the latter part of 1864 or first part of 1865 by purchase for value from Crowley.

On plaintiff's call defendant produces defendants bond book.

Plaintiff gives the book in evidence, and plaintiff reads from the book the following heading:

Issue of bonds by the township of Mullica in pursuance of a resolution adopted January 1, 1864, and at p. 7, plaintiff reads:

62

Date of Bond.	*Number.*	*Amount.*	*To whom issued.*	*When due.*
Dec'r 31, 1864.	145	$500	Samuel Crowley.	Dec'r 31, 1866
"	146	1,000	"	"
"	147	1,000	"	"
"	148	1,000	"	"
"	149	1,000	"	"
"	150	1,000	"	"

Plaintiff re-offers the bonds in evidence.

Defendants object.

Bonds ruled out.

Plaintiff excepts.

Plaintiff rests.

The defendant moves to call the plaintiff.

Judge charges the jury to find for the defendant.

And thereupon the counsel for the said plaintiff did then and there except to the aforesaid ruling, charge, and opinion of the said court, and in as much as the said ruling, charge, and opinion so excepted to do not appear upon the record—

The said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court, and
63 requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions pursuant to the aforesaid statute in such case made and provided, this 29th day of March, A. D. 1881.

W. McKENNAN, [L. S.] *Cir. Judge.*

UNITED STATES OF AMERICA, }
District of New Jersey, } *ss.:*

I, S. D. Oliphant, clerk of the United States circuit court for the district of New Jersey, in the third circuit, do hereby certify the foregoing to be a true transcript of the judgment and proceedings in said entitled cause, as the same now remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton, in said district, this eighth day of July, A. D. eighteen hundred and eighty-one.

[SEAL.] S. D. OLIPHANT,
Clerk, U. S. Ct. Ct.

Endorsed on cover: New Jersey C. C. U. S. No. 285. George W. Middleton, plaintiff in error, *vs.* The Inhabitants of the Township of Mullica, County of Atlantic. Filed 2d September, 1881.

112-433

IN THE

Supreme Court of the United States.

GEORGE W. MIDDLETON,
Plaintiff in Error.

vs.

THE INHABITANTS OF THE TOWNSHIP OF MULLICA, COUNTY OF ATLANTIC, STATE OF NEW JERSEY,
Defendants in Error.

No. 21. October Term, 1884.

BRIEF OF PLAINTIFF IN ERROR.

	PAGE.
History of the Case,	1
Specifications of Error,	8
Brief of Argument,	8

F. C. BREWSTER, JR.,
F. CARROLL BREWSTER,
For Plaintiff in Error.

In the Supreme Court of the United States.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

GEORGE W. MIDDLETON, PLAINTIFF IN ERROR,

vs.

THE INHABITANTS OF THE TOWNSHIP OF MULLICA, COUNTY OF ATLANTIC.

STATEMENT OF THE CASE.

In the year 1864 the inhabitants of the township of Mullica being without money in the township treasury, found themselves confronted by a serious difficulty caused by one of the calls of the President of the United States for volunteers to recruit the army then engaged in the suppression of the rebellion. Two ways of escape from the dilemma presented themselves. One was to fill up the quota assigned to the township by an enrollment from the numbers of the patriotic inhabitants. The other method was to employ substitutes, should patriotism and love of country be at such a low ebb that no men could be found willing to shoulder a musket in defence of their homes. It was determined to employ substitutes, but with an empty treasury it became necessary to borrow money on the credit of the township.

In those troublesome times this was no easy operation. In this case it was found to be an impossibility. At this juncture Samuel Crowley, the agent of the township committee, was sent to solicit pecuniary aid from George W. Middleton, the plaintiff in error. Mr. Middleton declined his overtures. Then Timothy Henderson, president, and Edward T. McKean, clerk of the township committee, old friends of Middleton, came to him and personally pleaded the hardship of their position with such effect that he finally yielded to their solicitations. The course of Henderson and McKean on behalf of the township committee was entirely within the scope of their authority, for by acts of the General Assembly of the State of New Jersey power had theretofore been conferred upon the township to borrow money by means of the township committee for the purposes mentioned, and it was never dreamed by any one to suggest that the acts of either Henderson and McKean or the township and township committee in this behalf were *ultra vires*, until the comparatively sudden and unexpected termination of the war early in 1865, the following year, rendered unnecessary the services of the quota of men assigned to the township of Mullica, and to employ whom the money secured by the bonds in suit was borrowed from the plaintiff in error. After the return of the president and clerk of the township committee from their successful mission to the plaintiff in error, five bonds for $1000 each, numbered respectively 146, 147, 148, 149, 150 and one bond for $500, numbered 145, all under seal (see copies thereof, pages 11, 12, 13 of Record), were made, executed and delivered to Samuel Crowley as their agent, on the thirty-first day of December, 1864, by the township of Mullica, acting through the township committee, of which committee said Henderson was president and said McKean was clerk.

These bonds all recited that they were made by the township committee pursuant to a resolution passed January 1st, 1864, and were payable to the order of said Samuel Crowley, who was instructed to endorse and deliver them to the plaintiff in error. This was accordingly done early in January, 1865, when plaintiff in error delivered the consideration money therefor to Crowley,

the defendants' agent in the matter. Subsequently, after maturity of the bonds, when payment was refused, plaintiff in error, who is a citizen of Pennsylvania, endorsed these bonds at the advice of his then counsel to W. P. Gallagher, in order that suit might be brought in the Supreme Court of the State of New Jersey. Afterwards, upon the discontinuance of that action and commencement of suit in the United States Court, they were transferred again to the plaintiff in error.

Thus suit was begun by the plaintiff in error in the Circuit Court of the United States for the District of New Jersey against the inhabitants of the township of Mullica.

The pleadings were somewhat complicated.

The *narr.* (*vide* page 3 of Printed Record) contains thirteen counts. The first, second, third, fourth, fifth and sixth counts (*vide* pages 3, 4, 5 and 6 of Record) were to each one of the bonds, numbered 146, 147, 148, 149, 150 and 145, respectively, and declared that the defendants, being duly authorized and empowered by the laws of the State of New Jersey, did on the thirty-first day of December, A. D. 1864, at the township of Mullica, in the county of Atlantic, by the name of the township of Mullica, by their certain writing obligatory by them, made and executed, sealed with their seal, acknowledge themselves indebted unto Samuel Crowley, who was the agent of the defendants for the purpose of assisting them in passing away and transferring said bonds to raise money thereon for the use and benefit of the defentants, the consideration of which they thereby promised to pay to the said Samuel Crowley, or order, two years after the date thereof, with interest at the rate of six per cent. per annum, payable annually, at the State Bank at Camden. And the defendants having so made and executed said bonds, afterwards, on the sixteenth day of January, 1865, at Philadelphia, delivered said bonds to the plaintiff, and the said Samuel Crowley, as agent of the defendants, and being by them duly authorized and requested, then and there endorsed said bonds and thereby, in writing, appointed said sums of money therein mentioned to be paid to the plaintiff.

The seventh, eighth, ninth, tenth, eleventh and twelfth counts (*vide* pages 7, 8, 9, 10 of Record) declared upon each of the foregoing as township orders, stating that the defendants being authorized by the laws of the State of New Jersey, on December 31st, 1864, by the name of the township of Mullica, did by Timothy Henderson, president, and Edward T. McKean, clerk of the township committee, the duly authorized agents of defendants, make their township orders in writing, and thereby promised to pay, two years after the date thereof, to Samuel Crowley, the agent of the defendants, or order, the consideration mentioned in each order, with interest at the rate of six per cent. per annum, payable annually, at the State Bank at Camden, and delivered the same to the plaintiff. And the said Crowley, as agent of the defendants, endorsed said orders and appointed said sums of money therein mentioned to be paid to the plaintiff.

The thirteenth count (*vide* page 10 of Record) was for money lent and expended, &c., by plaintiff at request of defendants, and money had and received for the use of the plaintiff, and money due to plaintiff for interest upon and for forbearance of divers large sums of money, &c.

To the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth counts defendants filed a demurrer, and jointly with the same filed *two pleas of nil debit and the statute of limitations to the last or thirteenth count* (*vide* pages 13 and 14 of Record).

The plaintiff to this demurrer replied (pages 14 and 15 of Record), averring the sufficiency of the first twelve counts, praying judgment, and to the two pleas to the thirteenth count joined issue. Upon the plaintiff's motion, and after argument the demurrer was overruled by the court (*vide* page 15 of Record).

The defendants then plead as follows:—

1. To the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth counts, *nil debit* (*vide* page 15 of Record).

2. To the first, second, third, fourth, fifth and sixth counts, *non est factum* (*vide* page 15 of Record).

3. To the first, second, third, fourth, fifth and sixth counts (*vide* page 15 of Record), that the defendant was not duly authorized and empowered by the laws of the State of New Jersey to make, execute and seal the said bonds mentioned.

4. To the seventh, eighth, ninth, tenth, eleventh and twelfth counts (*vide* page 16 of Record), that the defendant was not authorized and empowered by the laws of New Jersey to make the said several township orders mentioned.

5. To the first, second, third, fourth, fifth and sixth counts (*vide* page 16 of Record), that the said bonds mentioned were not made, executed, sealed or issued by any order or authority of a legally called meeting of the voters of the township of Mullica.

6. To the seventh, eighth, ninth, tenth, eleventh and twelfth counts (*vide* page 16 of Record), that the said several township orders mentioned were not made by any order or authority of a legally called meeting of the voters of the township of Mullica.

7. To the first, second, third, fourth, fifth and sixth counts (*vide* page 16 of Record), that the said bonds were not ordered to be made, executed, sealed or issued at a legally called meeting of the voters of the township of Mullica by a majority of the voters present at such meeting.

8. To the seventh, eighth, ninth, tenth, eleventh and twelfth counts (*vide* page 17 of Record), that the said several township orders were not made and issued at a legally called meeting of the voters of the township of Mullica by a majority of the voters present at such meeting.

9. To the first, second, third, fourth, fifth and sixth counts (*vide* page 17 of Record), that the said bonds mentioned were

not issued to pay bounties to fill quotas assigned to the township of Mullica under any call of the President of the United States for men for the service of the United States.

10. To the seventh, eighth, ninth, tenth, eleventh and twelfth counts (*vide* page 17 of Record), that the said several township orders mentioned were not issued to pay bounties to fill quotas assigned to the township of Mullica under any call of the President of the United States for men for the service of the United States.

11. To the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth counts (*vide* page 18 of Record), that the several causes of action mentioned did not accrue within six years before commencement of suit.

Upon the plaintiff's motion, and after argument, the court ordered (*vide* page 18 of Record), that *the first, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh pleas* be stricken off, the plea of *nil debit*, however, to stand so far as applicable to the counts upon the money orders.

Under this decree the issue was therefore reduced to *non est factum* to the first, second, third, fourth, fifth and sixth counts, the counts upon the bonds; *nil debit* to the seventh, eighth, ninth, tenth, eleventh and twelfth counts, being the counts upon the money orders; *nil debit* to the thirteenth count, being the count for money had and received, money lent and expended, money for forbearance, &c., and *statute of limitations* to said thirteenth or last count, as aforesaid.

These two pleas last mentioned to the thirteenth count were filed jointly with the demurrer to the first twelve counts, which was overruled.

Upon the trial of the cause,—

Edward T. McKean (*vide* page 20 of Record) testified that in 1864 he was clerk of the township of Mullica, and Timothy Henderson was president of the township and chairman of the

township committee. That Henderson was dead. Witness identified his signature as clerk, Henderson's signature as president of the township, and Crowley's signature as endorser upon the bonds in suit.

George W. Middleton, the plaintiff (*vide* page 21 of Record), produced the bonds and stated that he might have received them from Henderson or McKean, but to the best of his recollection he received them from Crowley for value.

The acts of Assembly of the State of New Jersey authorizing, as plaintiff claims, the issue of these bonds were then read (*vide* page 21 of Record), and plaintiff offered the six bonds declared on in evidence (*vide* page 22 of Record). The defendants objected that no power had been shown to issue the bonds (*vide* page 22 of Record).

The objection was sustained by the court and the bonds ruled out (*vide* page 22 of Record). Plaintiff then called for defendants' bond book, which was produced.

Plaintiff gave the book in evidence (*vide* page 22 of Record) and read from the book the following heading: "Issue of bonds by the township of Mullica in pursuance of a resolution adopted January 1st, 1864," and at page 7 plaintiff read as follows:—

Date of Bond.	Number.	Amount.	To Whom Issued.	When Due.
Dec. 31, 1864,	145	$500	Samuel Crowley,	Dec. 31, 1866.
" "	146	1000	"	" "
" "	147	1000	"	" "
" "	148	1000	"	" "
" "	149	1000	"	" "
" "	150	1000	"	" "

Plaintiff then re-offered the bonds in evidence (*vide* page 22 of Record).

The defendants objected. The objection was sustained by the court and the bonds ruled out. To this the plaintiff excepted and rested, and the court charged the jury to find for the defendant (*vide* page 22 of Record).

SPECIFICATIONS OF ERROR.

The plaintiff in error assigns the following specifications of error.

I. The learned judge who tried the cause in the court below erred in overruling the plaintiff's offer of the bonds in suit.

II. The court below erred in instructing the jury to find a verdict for the defendants.

Wherefore the plaintiff in error, for the errors above assigned, prays the Supreme Court of the United States to reverse the judgment entered by the said Circuit Court of the United States in and for the District of New Jersey for the Third Circuit.

BRIEF OF ARGUMENT.

First Point.

The Court Erred in Overruling the Plaintiff's Offer of the Bonds in Suit.

This point relates to the first assignment of error, viz.:—

The learned judge who tried the cause in the court below erred in overruling the plaintiff's offer of the bonds in suit.

The defendants' objection to the offer was that no power had been shown to issue the bonds. Nevertheless, immediately before the offer was made, acts of the Assembly of the State of New Jersey, approved March 4th, 1864, and April 8th, 1864, were read to the court, showing the power conferred upon the township in this matter. The said acts under and by virtue of which the bonds were issued are set forth at length, as follows:—

ACT OF MARCH 4TH, 1864.

LAWS OF NEW JERSEY, SESSION OF 1864, PAGE 158.

CHAPTER XCIX.

Act to legalize certain acts of the township of Mullica, in the county of Atlantic, relative to raising money to pay bounty to volunteers and to provide for the payment of the same.

WHEREAS, The inhabitants of the township of Mullica, in the county of Atlantic, did, *on the first day of January, Anno Domini 1864, vote to pay* a bounty of $225 to each person volunteering to fill the quota of said township, under the calls of the President of the United States (the said quota being thirty-four), and

WHEREAS, The said inhabitants having no authority under the laws of the State to offer said bounty or borrow money for the payment of the same, therefore,

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey, that the said township of Mullica be authorized to provide for the payment of said bounties the sum of $7650* and the interest thereon, by *the issuing of their bonds* or township orders, bearing interest at the rate of six per cent. per annum, and *payable at such times as the township committee of said township* may determine; *Provided*, That not less than $1500, or more than $2500, shall be raised for the purpose of paying the said bonds or orders in any one year, including the interest thereon.

2. *And be it enacted*, That the said taxes authorized to be levied and collected by virtue of this act, shall be apportioned and raised in like manner as other taxes are raised in the said township.

3. *And be it enacted*, That the acts and *doings of the township committee* and of the inhabitants of the said township of Mullica, mentioned in the first section of this act, to raise $7650 and the interest thereon, to pay bounties to volunteers as aforesaid to fill the quota of the said township, ARE valid in all respects, and binding upon the inhabitants and taxable property of said township.

4. *And be it enacted*, That this act shall take effect immediately, and shall be taken and held as a public act.

ACT OF APRIL 8TH, 1864.—*Vide*

LAWS OF NEW JERSEY, SESSION OF 1864, PAGE 679.

CHAPTER CCCLXXXIX.

An act to authorize the township of Mullica, in the county of Atlantic, to raise money to pay bounties and to provide for the payment of the same.

WHEREAS, The inhabitants of the township of Mullica, in the county of Atlantic, are desirous of raising money to pay bounties to fill the quotas assigned the said township under the last call or any future calls of the President of the United States; and

WHEREAS, The inhabitants having no authority under the existing laws of the State to offer said bounties or provide for the payment of the same, therefore,

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the inhabitants of the said township of Mullica be authorized at any legally called meeting of the voters of said township, to raise such sums of money as a majority of the voters present may determine, to pay bounties to fill the quotas assigned to said township, as mentioned in the preamble of this act.

2. *And be it enacted*, That the said township of Mullica be authorized to provide for the payment of said bounties by the issuing of their bonds, bearing interest at the rate of six per cent. per annum, and *payable at such times as the township committee of said township of Mullica may determine; Provided*, That not less than $1500 or more than $2500 shall be raised by taxation for the purpose of paying said bonds in any one year, including the interest thereon.

3. *And be it enacted*, That the taxes authorized to be levied and collected by virtue of this act shall be apportioned and raised in like manner as other taxes are raised in said township.

4. *And be it enacted*, That this act shall take effect immediately, and be taken and held as a public act.

Now, in regard to these two laws, it will at once be noticed by the most casual observer that one, that of March 4th, 1864, *confirms and legalizes* certain acts already theretofore done by the authorities of the township of Mullica, viz., the voting or passage of a resolution on the first day of January, 1864, to pay a certain bounty to each person volunteering to fill the quota of the township; and the other, the act of April 8th, 1864, enacts that a new meeting of the inhabitants might be called to provide for raising money for the same purpose. There is nothing antagonistic in the two laws. The last does not even by implication repeal the former. They are part and parcel of the same transaction. The defendants could either proceed under the resolution of January 1st, 1864, legalized by the act of March 6th, 1864, or begin *de novo* under the act of April 8th, 1864. Both acts recognize and confer power upon the township committee, who are thereby recognized as the lawful agents of the township, which as a mere aggregate of individuals could perform nothing in any other way.

As a matter of fact the township committee proceeded to issue the bonds under the authority of the act of March 6th, 1864, and all they did was valid unless that act is repealed by the act of April 8th, 1864. The said act of March 6th, 1864, provides no distinct method of procedure on the part of the

inhabitants or the township committee in raising the money. Such was not the purpose of the act. Whatever was done on January 1st, 1864, was legalized, whether a resolution or vote of the inhabitants themselves or a vote or resolution of their agents and representatives, the township committee. For all the purposes of this case, therefore, it is useless to inquire whether there was a meeting of the voters of the township to discuss the question and a determination thereof by a majority of the voters present. This resolution of January 1st, 1864, is duly recited on the face of the bonds and in the bond-book of the township, in which, at page 7, the issue of said bonds was duly entered. Said entry in the bond-book, which was offered in evidence on the trial (*vide* page 22 of Record), remains to this day, and has never been canceled or questioned by any subsequent township committee or any subsequent meeting of the voters of said township. The bonds were issued in accordance with law, executed by the duly constituted officers of the township, delivered by these officers to the payee, Crowley, the lawfully appointed agent of the township committee, who assigned them for value to plaintiff in error, and, moreover, said bonds were afterwards recorded in the bond-book of the township, where they were open to the inspection of every subsequent township committee and each and every voter at all the subsequent town meetings. By all these circumstances the defendants are estopped from asserting the illegality of these bonds as against the plaintiff, a *bona fide* holder.

The city of Washington was, by its charter from Congress, granted the power to authorize the drawing of lotteries for effecting certain improvements in the city with certain conditions. Resolutions were passed by the corporation appointing managers to propose a lottery to raise $30,000, and to sell tickets; the managers sold the lottery to Gillespie. The ticket in suit was purchased by plaintiff from one of Gillespie's agents in Virginia, and drew the prize. The *Supreme Court* reversed the court below, and held that Gillespie was the agent of the corporation and they were bound by his acts.

Clark *vs.* City of Washington, 12 Wheat., 40.

In a suit against a municipal corporation by a *bona fide* holder of the bonds whose title accrued before maturity, the corporation cannot show by way of defence, if the legal authority of the corporation to issue the bonds is sufficiently comprehensive, a want of compliance on its part with formalities required by the statute authorizing the issue of the bonds, or show fraud in their own agents in issuing them.

The cases of—

Woods *vs.* Lawrence Co., 1 Black, 386,

Mercer Co. *vs.* Hacket, 1 Wall., 83,

Gelpecke *vs.* City of Dubuque, Id., 175,

Meyer *vs.* City of Muscatine, Id., 384, acted upon as settling the law on this point.

Grand Chute *vs.* Winegar, 15 Wall., 356, A. D. 1872. Opinion by Hunt, J.

The president and council of Forsyth negotiated for purchase of the Monroe Female College in the corporate limits and Hilliard Institute, without said limits. The plaintiffs alleged in the bill, to restrain the defendants from raising $30,000 by taxation, that the election held at which was submitted the question whether the town should issue the bonds to the amount of $10,000 was without act of Legislature authorizing the same. That the election was regarded as a farce, and few citizens voted, while large numbers not citizens did vote. Said election was illegal, yet defendants proceeded to issue bonds and have disposed of them. That they did not issue bonds to the amount of $10,000, but notes and bills to the amount of $30,000. That the act of the Legislature subsequently passed to authorize councils through their president and treasurer to issue such notes was void and unconstitutional. That said bills have a local circulation, and the holders thereof have notice of their illegality and are fully cognizant of the facts alleged.

McCay, J., refused the injunction, saying:—"It cannot be set up as against *bona fide* holders of negotiable papers of this character, when the city has authority to issue, that the details of law have not been conformed to."

Dannielly *vs.* Cabaniss, 52 Georgia, 211.

Where bonds issued by a municipal corporation having lawful authority to issue them upon the performance of certain conditions precedent refer upon their face to such authority, and there is printed on their back a copy of an ordinance declaring such performance, it is *not an error in an action against the corporation by an innocent holder of them to sustain a demurrer to a special plea tendering an issue as to the authority of the corporation to issue them*, or as to matters of fact contained in the recital of such ordinance.

Nauvoo *vs.* Ritter, 7 Otto, 389. Opinion by Waite, C. J.

The authority conferred by the charter of a railroad company in Missouri, upon the county court of any county in which a part of the road might be, to subscribe to the capital stock thereof, was not revoked by Section 14 of Article 11 of the existing constitution of that State, and where the General Assembly reserved the right to amend the charter, and the company was consolidated with another, pursuant to a law passed after the adoption of the constitution, the county court of the county through which the road passed might, *without submitting the question to a popular vote, lawfully subscribe to the capital stock of the consolidated company, and issue its bonds in payment therefor.*

County of Schuyler *vs.* Thomas, 8 Otto, 169, A. D. 1878. Opinion by Hunt, J.

This was a writ of error to the Circuit Court of the United States for the Eastern District of Arkansas.

The question raised was as to the validity of bonds issued by the city of Little Rock.

The city issued its bonds engraved with vignettes on bank-note paper, of various denominations, ranging from one dollar to one hundred dollars, and having the form and appearance of treasury notes of the United States, or bank-bills, and it paid them out to its creditors for property sold, materials furnished and labor performed. It received them for taxes and other dues, and to some extent reissued them. They formed a con-

siderable portion of the circulating medium of the city and vicinity. Under the authority of a statute of the State, empowering the city council of any city to issue bonds for the purpose of extending the time of paying its indebtedness, which it was unable to meet at maturity, the city passed an ordinance providing for the redemption of the bonds first described. A, the lawful holder of some of them which had been issued to other parties in payment of valid claims against the city and were overdue, surrendered them to the city and received in lieu of the amount due thereon bonds for which the ordinance provided, and a credit on the books of the city. The city failing to pay A brought suit against it. A recovery was resisted on the ground that the bonds engraved on bank-note paper had been *issued in violation of law*, and that the surrender of them was not a valuable consideration for the bonds and the credit received by A.

It was held, in the opinion delivered by Hunt, J., that whether the original bonds were issued in violation of law or not, a point which this court does not decide, A is entitled to recover.

Little Rock *vs.* National Bank, 8 Otto, 308, A. D. 1878.

If a city issues bonds under its corporate seal, &c., in accordance with its charter, which empowers the council, with the sanction of a majority of voters attending an election for that purpose, to borrow money generally and to issue bonds therefor, and the bonds recite upon their face that they are issued in accordance with certain ordinances of the city, the titles of which, being quoted alone in the bonds, characterizes the ordinances as providing for a loan for municipal purposes, the city is estopped in a suit upon the bonds by an innocent purchaser for value, to set up that the ordinances appropriated the money to other purposes, and that the bonds were therefore void.

Hackett *vs.* Ottawa, 9 Otto, 86 (1878). Opinion per Harlan, J.

A town in Wisconsin having, pursuant to law, voted to issue its bonds in aid of the construction of a railroad in that State,

the bonds bearing date June 1st, 1871, and signed by A, as chairman of the board of supervisors, and by B, as town clerk, were issued and by A delivered to the railroad company. When sued on the coupons by a *bona fide* holder of the bonds for value before maturity, the town pleaded that the bonds were not in fact signed by B until July 13th, at which date he had ceased to be town clerk, his resignation of that office having been, June 17th, tendered and accepted and his successor duly elected and qualified.

Held (1.) That the town was estopped from denying the date of the bonds. (2.) That in the absence of anything to the contrary, it must be assumed for all the purposes of this case that the bonds were delivered to the company by A, with the assent of the then town clerk, and that they were, therefore issued by the proper officers of the town.

Town of Weyauwega *vs.* Ayling, 9 Otto, 112 (1878). Opinion by Waite, C. J.

An act of the Legislature of Mississippi authorized county subscriptions to railroad stock, provided a majority of the electors favored the subcription. When first submitted the proposition was rejected. At a second election it was adopted.

Another act declared that the bonds should be payable to the *president and directors* of the company. Bonds were issued payable to the railroad company or bearer. They recited that they were issued in pursuance of said acts.

Held (1.) That the requirement that they should be made payable to the president and directors of the company and their successors and assigns is only directory, and that the recital therein estops the county from taking any advantage of the irregularity committed by its servants. (2.) That no place of payment having been designated by the act it was competent to make the bonds payable in New York. (3.) That as in that State they could, after being assigned in blank, pass by delivery from hand to hand and have all the properties of commercial paper, the result is the same as if they had been drawn in literal conformity with the statute. (4.) That in the absence of any

prohibition in the act against more than one submission to the electors of the question of making the subscription, the second vote was not unlawful.

Supervisors *vs.* Galbraith, 9 Otto, 214, (1878). Opinion by Swayne, J.

Where the authorities of a town in Illinois, being thereunto empowered, subscribed in its behalf for stock in a railroad company and issued its coupon bonds in payment therefor, the town, when sued by a *bona fide* purchaser for value of the coupons before maturity, cannot set up as a defence that the company disregarded its promise to construct the road, or that the town officers delivered the bonds in violation of special conditions not required by statute, and of which he had no knowledge or notice.

Brooklyn *vs.* Insurance Company, 9 Otto, 362 (1878). Opinion by Harlan, J.

Where the bonds were signed by the town officers designated for that purpose by the charter of the company which authorized the issue of the bonds, after the requisite popular vote and the subscription, it is not necessary that the Board of Auditors or the other corporate authorities should participate in their issue and delivery. *Id.*

Where a suit was brought by the town in the County Court against the company and others, and a decree rendered that the bonds and coupons were null and void and should be surrendered for cancellation;

Held, That the decree bound the parties who were personally served with process or who appeared, and did not affect the other holders of the securities who had only constructive notice of the suit. *Id.*

Bonds of a township in Kansas payable to A, a railroad company or bearer, were duly executed by the township trustee and township clerk, acting in their official capacity as its legal representatives. They recite that they were issued pursuant to

an order of the proper officers of the township made by authority of an act of the Legislature which is therein cited, and were ordered by the qualified electors of the township at an election duly held. An action was brought by a *bona fide* holder for value of the interest coupons attached to some of the bonds who had no notice of any fact impairing their validity.

Held, That it is not a defence to the action that at the time of voting and that of issuing the bonds their entire amount was in excess of the proportion which by law they should bear to the taxable property of the township, or that after the vote at said election had been cast in favor of subscribing for stock in B, a railroad company, the subscription was made for stock in A, and said bonds issued in payment therefor, B having under a law existing at the time of said election become merged and consolidated with A to form a continuous line of road.

The opinion delivered by Waite, C. J., stated, *inter alia*, as follows:—

"The township trustee and the township clerk, who made the subscription and issued the bonds in this case, were the officially constituted authorities of the township, and when they subscribed to the stock and issued the bonds, they acted in their official capacity as the legal representatives of the township and not as mere agents. In this particular they occupied the position of the county court in the Scotland County case. They were, to all intents and purposes, the township in its corporate capacity."

Wilson *vs.* Salamanca, 9 Otto, 499 (1878).

The bonds have all the quality of commercial paper. In the hands of a *bona fide* holder they can be enforced. The county judge of Orleans, in New York, authorized the issue of the bonds of the town.

The bonds were issued.

Subsequently his judgment was reversed on the ground that he should have allowed certain petitioners to withdraw.

Held, That this was no defence against a *bona fide* holder.

Orleans *vs.* Platt, 9 Otto, 676 (1878). Opinion by Swayne, J.

An act of the Legislature of Kansas, approved February 10th, 1865, authorized counties and cities to issue bonds to railroad companies upon approval of majority of electors, &c.

The Board of Commissioners of Bourbon county, March 8th, 1867, made an order, duly entered on the minutes, that the county should subscribe by its bonds $150,000 to the stock of any railroad company that should construct a road at a point on the Tebo & Neosho Railroad, running westward via *Fort Scott*, provided that the question should be submitted to the qualified electors of the county, in pursuance of the provisions of the act of February 10th, 1865.

Election to be held May 7th, 1867.

May 10th, 1867, the board declared that there was a majority of twenty-six votes "*for railroad bonds*," and that there was no evidence that an election had been held in the township of Franklin.

July 23d, 1869, the board made a further order providing for a special election August 24th, 1869.

The election was held, and the board declared that there was a majority in favor of the subscription.

The board appointed an agent to subscribe to the stock of the Tebo & Neosho Railroad Company, upon condition, *inter alia*, that the subscription should be void unless road-bed completed to *Fort Scott, January 1st, 1872*.

The bonds were issued and delivered and dated *July 1st, 1870*, and on their face purported to have been issued "*by order of the Board of County Commissioners of the county of Bourbon, Kansas, dated March 8th, 1867*," and were signed by the chairman of the board, attested by the clerk and duly sealed.

It appeared that Block was the *bona fide* owner of twenty of the bonds from which part of the coupons in suit were taken, and that he purchased them in open market without notice of any defence against them.

The commissioners set up in defence that there had been no proper submission to the electors of the county; that though the commissioners decided that a majority had voted in favor of the proposition, the returns from one township were not brought in,

and if the return had been made and counted a majority would have appeared against the proposition.

This belated return from the election of 1867 was not opened until June 27th, 1872, and then the board ordered the treasurer to withhold payment of principal and interest, and to notify the New York National Exchange Bank of New York, the fiscal agent of the county.

The Circuit Court rendered judgment in favor of Block.

The Supreme Court of the United States affirmed this judgment.

Mr. Justice Strong, who delivered the opinion of the court, said:—

"The bonds, it is true, contain no recitals. If they did contain a recital that an election had been held and that a majority had voted for the issue of the bonds, the recital would have been conclusive upon the county, and a purchaser would have needed to look no further than to the act of the Legislature. This is according to all our decisions. But in the absence of any recital, it may be conceded he was bound to inquire whether a majority vote had been returned for the issue of the bonds. But where was he to inquire? Plainly, only of the board, whose province it was to ascertain and declare the result of the election. Had he gone to their records they would have shown that the popular vote was in favor of the bond issue. * * * The county of Bourbon is therefore estopped in a suit by a bondholder, whose bonds were issued in 1870, from asserting that the canvass of 1867 was incorrect, and that in fact no majority of the qualified electors had voted in favor of the issue of the bonds. All that took place afterwards, all the new evidence that was discovered, the new election ordered and held in 1869, and the action of the board after the bonds were issued, are immaterial. * * * Nor do we place any reliance upon the second order made in 1869, and the election held thereunder, resulting in a large majority in favor of the subscription and issue of the bonds. The bonds stand on the order and vote of 1867 as determined by the Canvassing Board at that time."

Block *vs.* the Board of Commissioners of Bourbon County,

Kansas, 9 Otto, 686, A. D. 1878. Error to Circuit Court of the United States, District of Kansas.

A provision in the constitution of Mississippi, that the Legislature shall not authorize a county to lend its aid to a corporation unless two-thirds of the qualified voters shall assent thereto at an election to be held therein, does not require an assenting vote of two-thirds of the whole number enrolled as qualified to vote, but only two-thirds of those actually voting at the election held for the purpose. Hawkins *vs.* Carroll Co., 50 Miss., 735, disregarded and St. Joseph's Township *vs.* Rogers, 16 Wall., 644, and County of Cross *vs.* Johnson, 95 U. S., 360, followed. Carroll County *vs.* Smith, 111 United States Reps., 556.

Vide also:—

Roberts *vs.* Bolles, 11 Otto, 119.
Louisiana *vs.* Wood, 12 Otto, 294.
Harter *vs.* Hernochan, 13 Otto, 562.
Quincy *vs.* Cooke, 17 Otto, 549.

Second Point.

This point is the same as the second assignment of error, viz.:—

The Court below erred in instructing the jury to find a verdict for the defendants.

This was clearly a mistake on the part of the learned court, because, *there was* evidence in the case on the part of the plaintiff which should have gone to the jury under the thirteenth or common count of the declaration for money lent, advanced, paid and expended by plaintiff for said defendants, and for money had and received by said defendants to the use of the plaintiff, &c. On the trial the plaintiff testified that he *paid the money* borrowed by the township on these bonds to Samuel Crowley, and from said Crowley received the bonds as the *agent* of the township. The bonds themselvs recognize said Crowley *as agent,* and Edward T. McKean, the former clerk of the township, identified his signature to the endorsement on said bonds, and appeared to

be familiar with his authority as agent. The said bonds were beyond the shadow of a doubt admissible to show simply the agency of Crowley, no matter what their status was upon any other question. Upon this point they should have been received by the court, and the case allowed to go to the jury upon all this under the thirteenth count. If Crowley was the agent of the defendants, and as such agent delivered to the plaintiff the bonds and received from him the money, it would not affect the merits of plaintiff's case had the agent even gone so far as to embezzle the money thus received by him.

It does not appear that the bonds were offered in evidence at the trial for the specific purpose of showing the agency of Crowley, but being admissible for this reason their rejection by the court was error, because the court was bound to notice any reason for which they were admissible, though that reason may not have been specially referred to.

It may not be out of place to note here an error in the special verdict, drawn out at length on the record. In this verdict five issues are stated, whereas there should only have been four. The third issue mentioned is entirely erroneous and should be stricken out; there was no such issue in the case. The question of the statute of limitations as applying to the twelve counts was not before the jury at all. The defendants' eleventh plea, which set up the statute as against all of the twelve counts, was struck off. When the defendants demurred to the twelve counts, they, at the same time, filed two pleas, 1st, *nil debet*, and 2d, *statute of limitations*, to the *thirteenth or last count*. *The demurrer* alone was overruled and these two pleas remained in force. The defendants after the overruling of the demurrer filed the eleven pleas hereinbefore referred to, all of which, as has been mentioned, were struck off except the 2d or *non est factum* to the first, second, third, fourth, fifth and sixth counts, and part of the 1st *or nil debet* to the seventh, eighth, ninth, tenth, eleventh and twelfth counts.

F. C. Brewster, Jr.,
F. Carroll Brewster,
For Plaintiff in Error.

112-433

112-433

IN THE

Supreme Court of the United States.

GEORGE W. MIDDLETON,

Plaintiff in Error,

vs.

THE INHABITANTS OF THE TOWNSHIP OF MULLICA, COUNTY OF ATLANTIC, STATE OF NEW JERSEY.

Defendants in Error.

No. 21. October Term, 1884.

SUPPLEMENTARY BRIEF OF PLAINTIFF IN ERROR.

F. C. BREWSTER, JR.,
F. CARROLL BREWSTER,
For Plaintiff in Error.

BRIEF

OF THE

LAWS OF NEW JERSEY,

Incorporating the different townships and giving the same power to raise money.

The act of 1798, February 21st, Patterson's Laws of New Jersey, page 276,

Entitled an act incorporating the inhabitants of townships; designating their powers and regulating their meetings.

SECTION 1 erected into *bodies politic* (among several different townships in several different counties) in the county of *Gloucester*.

The inhabitants of the township of Gloucester.
" " " Gloucester town.
" " " the township of Waterford.
" " " " " " Newton.
" " " " " " Deptford.
" " " " " " Greenwich.
" " " " " " Woolwich.
" " " " " " Egg Harbor.
" " " " " " Galloway.
" " " " " " Weymouth.

SECTION 11, *Ib., page 284.*

"That the persons qualified to vote at town meetings shall be and they are hereby empowered at their annual meetings, or at any other meeting duly held for the purpose, to vote, grant and raise such sum or sums of money *for the maintenance and support of the poor, the building and repairing of pounds, the*

opening, making, working, &c., of roads, the destruction of noxious wild animals and birds, for running and ascertaining the lines and prosecuting or defending the common rights of such township, and for OTHER NECESSARY CHARGES AND LEGAL OBJECTS AND PURPOSES *thereof as they, or the* MAJOR PART OF THEM, SO ASSEMBLED, SHALL DEEM PROPER OR NECESSARY; which money so voted and granted shall be assessed, levied and collected by the same persons in the same manner and under the like fees, fines and penalties as the money raised in such township by the board of chosen freeholders of the county shall be assessed, levied and collected, and at such times and in such proportions as the said town meetings shall respectively direct and appoint.

ACT OF MAY 20TH, 1820.

REV., NEW JERSEY, 1820, PAGE 723,

ENTITLED

"A supplement to the act entitled 'An act incorporating the inhabitants of townships, designating their powers and regulating their meetings.'" (February 21st, 1798.)

SECTION 1, *Ib., page 724, enacted* "that the inhabitants of each and every township erected or established in any of the counties of this State since the twenty-first day of February, in the year 1798, be and they are hereby constituted a body politic and corporate in law, by the following names, viz.:"—*Inter alia.*

The inhabitants of the township of Hamilton, in the county of Gloucester.

SECTION 2 vested in said townships all the powers, privileges, &c., and made same subject to like regulations, which

the inhabitants of other townships in the State incorporated by the act to which this is a supplement, are or shall be by law subject and entitled to.

SECTION 8, *page 725, enacted* "That the following words in the eleventh section of the act to which this is a supplement, to wit, '*And for other necessary charges and legal objects and purposes thereof*,' shall be confined in their legal operation and construction to such necessary charges and legal objects and purposes, as *are by law expressly vested in the inhabitants of the several townships of this State by the act to which this is a supplement, or by some other act of the legislature of this State.*"

SECTION 9, *page 725*, grants power to the inhabitants of each of the townships to raise money for educating poor children "*to be laid out and expended in each township under the direction of the town committee.*"

CREATION OF THE COUNTY OF ATLANTIC.

BY ACT OF 1837, FEBRUARY 7TH.

SECTION 2.—*Rev. of N. J., 1709–1877, page 204, viz.:*— "All the eastern part of the county of Gloucester contained in the townships of *Galloway, Hamilton, Weymouth* and *Egg Harbor* be, and the same is hereby, erected into a separate county, to be named and hereafter called the *county of Atlantic.*"

SECTION 3.—Same powers, privileges and immunities granted as enjoyed by other counties.

No other mention of power.

CREATION OF THE TOWNSHIP OF MULLICA.

ACT OF ASSEMBLY, 1838, FEB. 21ST, P. L. 1838, p. 95.

Entitled "An act to divide the township of Galloway, county of Atlantic, into two townships."

By this act the *township of Galloway, county of Atlantic*, was divided into TWO, viz.:

TOWNSHIP OF MULLICA AND TOWNSHIP OF GALLOWAY.

No authority whatever was given to either to raise money for any purpose whatever save as implied in concluding lines of Section 1, which stated that each of said townships should "be entitled to all the rights, powers, privileges and advantages, and subject to the same regulations, duties and liabilities as by law are given to and prescribed for the several other *townships* in the *county of Atlantic*."

INCORPORATION.

ACT OF 1846. APRIL 14th.

Entitled "An act incorporating the inhabitants of townships, designating their powers and regulating their meetings."

SECTION 1.—*Rev. N. J., page 1191.*

"That the inhabitants of each of the several townships, precincts and wards of this State, hereinafter mentioned, be and they are hereby continued a body politic and corporate in law, *as heretofore constituted and established*, by the name of 'the inhabitants of the township of ———, in the county of ———,' as the case may be, that is to say:—"

SECTION 1.—(*16*), *page 1192.* "The inhabitants of the townships of *Egg Harbor, Galloway, Hamilton, Mullica and Weymouth,* in the county of Atlantic."

SECTION 4, *page 1193, directed* "*that the freeholders and inhabitants who are or shall be qualified by law to vote at town meetings,*" shall meet in town meeting, in county of Atlantic, on second Wednesday of March, annually.

SECTION 5, *Ib.*, prescribes who shall be entitled to vote at town meetings.

The clause giving power to raise money is as follows:—

SECTION 11.—*Page 1194.*

"That the persons qualified to vote at *town* meetings shall be, and they are hereby empowered at their annual meetings, or at any other meeting duly held for the purpose, to vote, grant and raise such sum or sums of money *for the maintenance and support of the poor; the building and repairing of pounds; the opening, making, working, &c. of roads; the destruction of noxious wild animals and birds; for running and ascertaining the lines, and prosecuting or defending the common rights of such township, and for other necessary charges and legal objects and purposes thereof* AS ARE *or* SHALL BE *by law expressly vested* in the inhabitants of the several townships of this State BY THIS OR SOME OTHER *act of the legislature;* which money so voted and granted, shall be assessed, levied and collected by the same persons, in the same manner, and under the like fees, fines and penalties as the money raised in such township by the board of chosen freeholders of the county shall be assessed, levied and collected, and at such times and in such proportions as the said town meetings respectively shall direct and appoint."

None of these acts of Assembly confer any right upon the township to use a *corporate seal.*

ACT OF MARCH 4TH, 1864.

LAWS OF NEW JERSEY, SESSION OF 1864, PAGE 158.

CHAPTER XCIX.

Act to legalize certain acts of the township of Mullica, in the county of Atlantic, relative to raising money to pay bounty to volunteers and to provide for the payment of the same.

WHEREAS, The inhabitants of the township of Mullica, in the county of Atlantic, did, *on the first day of January, Anno Domini 1864, vote to pay* a bounty of $225 to each person volunteering to fill the quota of said township, under the calls of the President of the United States (the said quota being thirty-four), and

WHEREAS, The said inhabitants having no authority under the laws of the State to offer said bounty or borrow money for the payment of the same, therefore,

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey, that the said township of Mullica be authorized to provide for the payment of said bounties the sum of $7650* and the interest thereon, by *the issuing of their bonds* or township orders, bearing interest at the rate of six per cent. per annum, and *payable at such times as the township committee of said township* may determine; *Provided*, That not less than $1500, or more than $2500, shall be raised for the purpose of paying the said bonds or orders in any one year, including the interest thereon.

2. *And be it enacted*, That the said taxes authorized to be levied and collected by virtue of this act, shall be apportioned and raised in like manner as other taxes are raised in the said township.

3. *And be it enacted*, That the acts and *doings of the township committee* and of the inhabitants of the said township of Mullica, mentioned in the first section of this act, to raise $7650 and the interest thereon, to pay bounties to volunteers as aforesaid to fill the quota of the said township, ARE valid in all respects, and binding upon the inhabitants and taxable property of said township.

4. *And be it enacted*, That this act shall take effect immediately, and shall be taken and held as a public act.

ACT OF APRIL 8TH, 1864.

VIDE LAWS OF NEW JERSEY, SESSION OF 1864, PAGE 679.

CHAPTER CCCLXXXIX.

An act to authorize the township of Mullica, in the county of Atlantic, to raise money to pay bounties and to provide for the payment of the same.

WHEREAS, The inhabitants of the township of Mullica, in the county of Atlantic, are desirous of raising money to pay bounties to fill the quotas assigned the said township under the last call or any future calls of the President of the United States; and

WHEREAS, The inhabitants having no authority under the existing laws of the State to offer said bounties or provide for the payment of the same, therefore,

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the inhabitants of the said township of Mullica be authorized at any legally called meeting of the voters of said township, to raise such sums of money as a majority of the voters present may determine, to pay bounties to fill the quotas assigned to said township, as mentioned in the preamble of this act.

2. *And be it enacted*, That the said township of Mullica be authorized to provide for the payment of said bounties by the issuing of their bonds, bearing interest at the rate of six per cent. per annum, and *payable at such times as the township committee of said township of Mullica may determine; Provided*, That not less than $1500 or more than $2500 shall be raised by taxation for the purpose of paying said bonds in any one year, including the interest thereon.

3. *And be it enacted*, That the taxes authorized to be levied and collected by virtue of this act shall be apportioned and raised in like manner as other taxes are raised in said township.

4. *And be it enacted*, That this act shall take effect immediately, and be taken and held as a public act.

DISCUSSION

Of Cases Cited by Defendant in Error.

Callahan *vs.* Township of Morris, 1 Vroom, page 160, A. D. 1862.

In Circuit Court, county Morris, plaintiff brought action to recover from township of Morris the sum of $102, which he alleged he expended upon the highway in Road District 47, over which he was elected overseer in spring of 1860 by the inhabitants at their annual town meeting. He alleged that the town committee made a contract with him in the spring of that year, directing him to go on and work out the same taxes on the road as had been worked out the previous year.

Chief Justice Whelpley directed a verdict for the defendants, on the ground that there was no evidence to the giving of a contract made by the committee with the plaintiff, "*if it had the right to make one to bind the township;*" and because the law contemplated only two modes of working the highways, one "*by money furnished to the overseer,*" the other "*by labor under the direction of the overseer, properly apportioned among the inhabitants,*" that there was not, as in the case before the court, "any intermediate mode of doing it on the credit of the township."

The lines quoted in paper book of defendant in error, "*the town committee has no common law power to bind the township; whatever powers they possess are derived from statutes,*" while quite good law, was mere *dicta* on part of the court.

Verdict was affirmed, and charge sustained in Supreme Court by C. J. and Haines, J.

Montague *vs.* Church School District, No. 3, of Millstone Township, Monmouth County, 5 Vroom, 218, A. D. 1870.

This was a case against an *incorporated school district* upon a promissory note alleged to have been given by the district.

Demurrer to the declaration was sustained, because there was no averment in the declaration "*that the note contains any promise to pay.*"

There is no application whatever to *Middleton* vs. *Mullica* beyond mere dicta in the opinion, viz.: "*The statute prescribes the mode in which the district may incur a binding obligation.*"

Hudson *vs.* The Inhabitants of the Township of Winslow, County of Camden, 6 Vroom, p. 437, A. D. 1872.

Plaintiff brought suit on a bond under the corporate seal.

By an act of February 22d, 1865, defendants were authorized, "at any special or regular town meeting, assembled according to law, to assess and provide for collection of any tax that said inhabitants may order for the payment of bounties when so assembled, *by a vote of two-thirds of those present*, or to order the issuing of bonds by the township committee, &c."

The bond recited that it was "made and issued in accordance with this act of February, 1865," and "*pursuant to a resolution adopted by a vote* of two-thirds of the inhabitants of said township of Winslow present, at a special meeting, assembled according to law, on the 27th day of February, 1865, by which resolution the township committee of said township of Winslow were directed to borrow the sum of $18,000, and to issue the bonds of the said 'the inhabitants of the township of Winslow, in the county of Camden' therefor, payable in one year, with interest, free of taxes."

Pleas, that the supposed town meeting, under whose order the bonds were made, was not assembled according to law, and that the order under which the bonds were issued was not made "by *a vote of two-thirds of the inhabitants of said township present at said town meeting*," were held good on demurrer, because, as was said by the court, "*it would seem that each of these pleas was intended to be a special non est factum.*"

This was the whole question in the case, which was an argument upon the *demurrer to the pleas.*

The plaintiff argued that because *the matters* in *the pleas* contradicted the *recitals in the bond*, the defendant could not plead them on the ground of estoppel.

But it was held that the rule had no application, because a party is only concluded by the admissions of his own deed, where the *existence* of the deed as the act of the party is admitted.

All else *was mere dicta.*

In Middleton *vs.* Mullica, pleas similar to the above were allowed to stand and the issue formed on them.

But, although the demurrer to the *sufficiency* of the *declaration* was overruled, yet the *bonds* so declared on were ruled out when offered in evidence.

In Hudson *vs.* Winslow, the defendants, it was said by the court, had "*no capacity to execute this writing, except such as is conferred by the act of February 22d, 1865,*" and *pleas* which would permit evidence showing that the provision of the statute had not been carried out were sustained.

So in Middleton *vs.* Mullica, it is claimed the liability of defendants rests upon the statutes of 1864, and if their provisions have not been carried out, evidence to show such a state of affairs as against the bonds in suit is admissible on the trial under the pleas which have been sustained.

Morrison *vs.* Inhabitants of Township of Bernards, 7th Vroom, 219, A. D. 1873.

This was an action of *debt* on a *bond* made by special commissioners of the township appointed by an act of Assembly of *April 9th, 1868*, authorizing certain towns to issue bonds and take stock in a railroad company. *To the declaration* stating these facts there was a *general demurrer.*

Section 2 of above act required that "no debt should be *contracted* or *bonds issued* by said commissioners, &c., *until the written consent shall have been obtained of a majority of the taxpayers.*"

It was insisted that the commissioners had no power to issue the bonds without the consent of the requisite number of taxpayers, and that as such consent is an essential element in the plaintiff's case, such fact must appear in the declaration.

The plaintiff held on the contrary that the bonds having been *formally made and issued*, and having fairly come into possession of the holder, the defendant is *estopped from denying* that the conditions existed which entitled its own officers to create the instrument.

But the court, Beasley, C. J., held that "this rule obtains only when the authority which is challenged depends upon *the existence of facts extrinsic of the charter, the knowledge of which is accessible only to the corporators, and are not known to the party dealing with the corporation*," and that "*in the present case the plaintiff is chargeable with knowledge of the fact that the commissioners had no lawful authority to put these bonds in the market unless by force of a vote of the requisite number of landowners and with knowledge as to the existence or non-existence of such consent.* The consequence is that these several matters are fundamental requisites to the plaintiff's right of action, and must appear in the declaration."

Judgment for defendant on the demurrer.

The vital thing in this case is the existence of a *condition precedent* in the act itself to the exercise of the power granted.

If the *narr. had set* forth the performance of this condition, the defendants on trial would be permitted to produce evidence showing the contrary.

But in Middleton *vs.* Mullica *the grant of power* by the act is unqualified and not dependent upon the performance of *any condition.*

The simple question is, whether the *power itself is or is not granted.*

There is therefore no application.

State, Verhule, Prosecutor, *vs.* Saalman, Collector of Mullica Township, 8 Vroom, page 156, A. D. 1874.

Certiorari, bringing up the tax assessed against the prosecutor in Mullica township.

The assessment was confirmed, except as to *three items*, as to which it was reversed, viz.:

1. A town meeting has no lawful right to raise money for "*incidental expenses*," without specifying what those expenses are.

2. A township assessor has no authority to raise without order of the township meeting, any money to pay costs and charges incurred in legal proceedings.

3. The raising of money to meet "*contingencies*" is wholly without the jurisdiction of the township committee.

The Town of Hackettsown *vs.* Swackhamer, 8 Vroom, page 191, A. D. 1874.

Rule to show cause.

The promissory note which was the subject of the suit was given by the treasurer of the town of Hackettstown, in the name and behalf of the town for money borrowed.

Beasley, C. J., awarded a *venire de novo* on the ground that because the charter of the town gave the right "to the council *from year to year* to vote and raise *by tax* such sum or sums of money as they shall deem necessary and proper," it did not follow that they had the right to raise money by *borrowing* or *by loans*. There is *no limitation* on the amount that may be raised. But *there is a limitation on the method of raising it*. The restriction is it shall be raised "*by tax*." This question of a *method* of raising money not authorized by statute does not apply to *Middleton* vs. *Mullica*.

State, Wharton, Prosecutor, *vs.* Koster, Collector of Washington Township, Burlington County, 9 Vroom, 309, A. D. 1876.

Certiorari, bringing up an assessment.

Upon the minutes of the annual meeting of 1874 appeared: *For township purposes, $400. For notes and bonds to be left to the town committee.*

The assessment over and above the sum of $400, viz., $1212, was reversed. The court said: "Assuming the power of the "town meeting to raise money by special acts (laws of 1864, 297, "and 1865, 268), they had no power to *delegate that authority* to "the *township committee*. Dillon on Mun. Corp., Section 60. "State *vs.* Saalman, 8 Vroom, 156."

This has no application whatever to Middleton *vs.* Mullica, where the power claimed to be granted comes directly from the *act of Assembly*, not only to the *town meeting* but to the *township committee*. The act of Assembly shows *direct* power or *none at all*.

Knapp *vs.* Mayor and Council of Hoboken, 10 Vroom, 394, A. D. 1877.

This was a motion to strike out certain pleas to a declaration in a suit brought to recover upon certain *improvement certificates of indebtedness under seal issued by the city, to pay the cost of improving Thirteenth Street*, and the opinion of the court was devoted to indicating the *distinction* between "bonds and other securities issued by municipal corporations *under legislative authority* as a means of raising money on a credit, and designed to be put upon the market, 'which by commercial usage have obtained the quality and attributes of commercial paper in respect of their transfer, among which is immunity in the hands of *bona fide* holders from defences to which they would be subject in the hand of the original parties,' and *ordinary corporation* warrants, 'orders and certificates of indebtedness which are merely evidence of indebtedness,' and which '*are not within this principle* and do not exclude inquiry into the legality of their issue or preclude defence thereto.'"

The *latter* cannot be invested by *municipal* corporations "*with the incidents of commercial paper so as to render them* in the *hands of bona fide holders unassailable* by defences to which they would be subject in the hands of the immediate parties, unless such power is conferred by legislative enactment."

This was the *whole point*, and certainly does not apply to Middleton *vs.* Mullica, where the securities fall within the first class mentioned.

Demarest *vs.* Inhabitants of New Barbadoes, 11 Vroom, page 604, A. D. 1878.

In this case certain illegal fees were charged and received by the collector, which were audited and approved by the township committee. The verdict in court below was in favor of the township, which *judgment* was affirmed in Court of Errors and Appeals, the court (Dodd, J.) saying, "The committee are agents of the township only so far as they act within the express provisions of the law. Payments made or sanctioned by them not authorized by legislative enactment are *ultra vires*, outside of their agency, and cannot bind *their principals, the people.*"

Again, this does not apply to Middleton *vs.* Mullica, where the township did not act in their *capacity as auditors* at all to sanction any payment of money whatever. By the act of 1864 they had express legislative authority conferred upon them entirely distinct from their *general* duties as defined by statute.

State *vs.* Sickles, 4 Zabriskie, 125.

Decided that a resolution at a town meeting, to raise for general township expenses as much as the township committee shall direct, or in these words, "*ways and means left to the committee,*" is illegal, as the inhabitants have no general power to vote money at their discretion, but are *confined to raising it for such legal objects as are by law expressly vested in them.*

Musgrove *vs.* Kennell and others, Township Committee of Greenville, 8 C. E. Green, 75.

There is nothing but *dicta* here to rely on, which was that the *township committee* have no power to borrow money on the faith of the township, that being power expressly vested in the inhabitants for legal purposes. But the *injunction* asked for to restrain the committee from *borrowing* money on their personal responsibility, to meet bills in anticipation of taxes, was refused.

Mendham *vs.* Losey, Pennington, 347.

Was a case of little importance, the point decided being that an overseer who had advanced money out of his own means to repair roads, without the authority of the township, could not recover from the latter.

The criticism of defendants' cases may be closed with a brief examination of one in which the *syllabus* is quoted at length, viz.:—

Town of Coloma *vs.* Eaves, 2 Otto, page 484, A. D. 1875.

The town of Coloma, county of Whiteside, Illinois, issued its bonds to the Chicago & Rock River Railroad Company, in payment of a subscription of $50,000 to the stock of the company under authority of an act of Assembly, approved March 24th, 1869.

By the eleventh section of the act the authority to make the subscription was made dependent on the result of the submission of the question whether the town would subscribe *to a popular vote of the township.*

The bonds *recited the act of Assembly and the approval of the subscription by the vote of the electors,* which was a *condition precedent* to the authority to subscribe.

The bonds were attested by the *supervisor and town clerk of said town* and sealed with *their seals,* not with a *corporate seal.*

Plaintiff below brought assumpsit, and on trial judgment was rendered for him.

The judgment was affirmed in the United States Supreme Court, in an opinion by Strong, J., who said:—

"*At the outset it is to be observed that the question is not between the town and its own agents, it is rather between the town and a person claiming through the action of its agents. The rights of the town as against its agents may be very different from its rights as against parties who have honestly dealt with its agents as such, on the faith of their apparent authority.*" * * * * * "At some time or other it is to be ascertained whether the directions of the act have been followed, whether there was any popular vote, or whether the majority of the legal voters present at the election did in fact vote in favor of the subscription. The duty of ascertaining was plainly intended to be vested somewhere, and once for all; and the only persons spoken of who have any duties to perform respecting the election and action consequent upon it, are the *town clerk* and the *supervisor* or other ex-

ecutive officer of the town." After dwelling upon the recitals in the bonds, the opinion goes on to state, "The persons "appointed to decide whether the necessary prerequisites to their "issue had been completed have decided and certified their "decision. Their recitals are such a decision, and beyond those "a *bona fide purchaser* is not bound to look for evidence of the "existence of things *in pais*. * * * Some of our deci- "sions have gone farther. In the leading case of Knox *vs.* "Aspinwali, 21 Howard, 544, the decision rested upon two "grounds. One of them was that the mere issue of the bonds "containing a recital that they were issued under and in pursu- "ance of the legislative act was a sufficient basis for an assump- "tion by the purchaser that the conditions on which the county "(in that case) was authorized to issue them had been complied "with, and it was said that the purchaser was not bound to look "farther for evidence of such compliance though the *recital did* "*not affirm it*."

Bradley, J., dissented to the opinion so far as it may be construed to *reaffirm* the point asserted in Knox *vs.* Aspinwall: "If the bonds themselves contain a *statement or recital* that such vote has been given, then the *bona fide purchaser* of the bonds need go *back no farther*. But a mere execution and issue of the bonds *without such recital* is not, in my judgment, conclusive. *It may be prima facie sufficient*, but the contrary must be shown. This seems to me to be the true distinction to be taken on this subject."

Now Middleton *vs.* Mullica differs from this case in that there was no *condition precedent* laid down in the act of Assembly to be performed, before the grant of power could take effect.

That act simply *validated* the resolution passed by the inhabitants at town meeting, January 1st, 1864. That resolution gave the *authority to borrow the money*, and that *authority* so confirmed *is recited in the bonds*. The bonds are then executed by the *town clerk* (as in Coloma *vs.* Eaves) and by the chairman of the body of officers invested by the legislature with the power of determining the periods of maturity of the bonds, namely the *township committee*. The very least then that can be said in their

favor is to maintain the position of Mr. Justice Bradley, *supra*, which was the view taken by *Nixon, J.*, in his opinion dismissing the demurrer of the township of Mullica to the plaintiff's declaration, namely: "It is not necessary to hold, as was done in Knox *vs.* Aspinwall, *supra*, that the mere fact of their execution by the township committee is conclusive that all precedent conditions had been performed, but it makes a *prima facie case* against the defendants and throws upon them the burden of alleging in their pleas and *proving on the trial* the existence of facts which either render the bonds void or excuse the defendants for their non-payment.

F. C. BREWSTER, Jr.,
F. CARROLL BREWSTER.

112-433

In the Supreme Court of the United States.

GEORGE W. MIDDLETON, PLAINTIFF IN ERROR,

vs.

THE INHABITANTS OF THE TOWNSHIP OF MULLICA, IN THE COUNTY OF ATLANTIC, STATE OF NEW JERSEY,

DEFENDANT IN ERROR.

BRIEF OF DEFENDANT IN ERROR.

P. L. VOORHEES,
For Defendant in Error.

In the Supreme Court of the United States.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

GEORGE W. MIDDLETON, PLAINTIFF IN ERROR.

vs.

THE INHABITANTS OF THE TOWNSHIP OF MULLICA, IN THE COUNTY OF ATLANTIC.

STATEMENT OF THE CASE.

The suit in which the judgment in the above stated case was rendered in favor of the defendent, was prosecuted to recover $5,500, the amount claimed to be due, with interest, upon six several writings claimed to have been made by the defendant and called in the plaintiff's declaration "writings obligatory," and "township orders," and numbered 145, 146, 147, 148, 149 and 150, all of which are similar except the numbers, and that No. 145 is for $500 and the others for $1000 each, and are as follows, viz.: (copy).

"UNITED STATES OF AMERICA, STATE OF NEW JERSEY."

No. of bond, 146. Amount $1000.

The township of Mullica, county of Atlantic, acknowledge themselves indebted to Samuel Crowley in the sum of one thousand dollars lawful money of the United States, which sum they promise to pay to the said Samuel Crowley or to his order two years after date hereof, with interest at the rate of six per centum per annum, payable annually, the aforesaid sum of one thousand dollars having been borrowed of said Samuel Crowley, by order of said township committee, pursuant to a resolution passed January 1st, 1864; interest payable at the State Bank at Camden.

In witness whereof the said township committee have caused this bond to be sealed with their seal and attested by the signatures of their president and clerk, this 31st day of December, A. D. one thousand eight hundred and sixty-four.

[L. S.] EDWARD T. McKEAN,
Clerk.

TIMOTHY HENDERSON,
U. S. Revenue stamp, 50 cents. President.

The plaintiff, in the first six counts of his declaration, set out the said six instruments respectively as "writings obligatory," and in the 7th, 8th, 9th, 10th, 11th and 12th counts of his declaration set out the said six instruments respectively as township orders, and added to the declaration the common counts.

The defendant demurred to the first twelve counts of the declaration and pleaded to the common counts, nil debet, and actio non accrevit infra sex annos.

The plaintiff replied to the pleas and joined in the demurrer to the first twelve counts.

The court overruled the demurrer, and the defendant pleaded.

1. Nil debet to the first twelve counts of the declaration.

2. Non est factum to to the first six counts of the declaration.

3. That the defendant was not authorized and empowered by law to execute the several writings obligatory set out in the first six counts of the declaration.

4. That the defendant was not authorized and empowered by law to make the several township orders set out in the 7th, 8th, 9th, 10th, 11th and 12th counts of the declaration.

5. That the several writings obligatory, in the first six counts of the declaration mentioned, were not made or executed by any order or authority of a legally called meeting of the voters of the township of Mullica.

6. That the several township orders, in the 7th, 8th, 9th, 10th, 11th and 12th counts of the declaration mentioned, were not made by any order or authority of a legally called meeting of the voters of the said township of Mullica.

7. That the several writings obligatory, in the first six counts of the declaration mentioned, were not ordered to be made and executed by a majority of the voters present at any legally called meeting of the voters of the township of Mullica.

8. That the several township orders, in the 7th, 8th, 9th, 10th, 11th, and 12th counts of the declaration mentioned, were not made and issued by a majority of the

voters present at any legally called meeting of the voters of the township of Mullica.

9. That the several writings obligatory, in the first six counts of the declaration mentioned, were not issued to pay bounties to fill quotas assigned to the township of Mullica under any call or calls of the President of the United States for men to be mustered into the army or service of the United States.

10. That the several township orders, in the 7th, 8th, 9th, 10th, 11th, and 12th counts of declaration mentioned, were not issued to pay bounties to fill quotas assigned to the said township of Mullica under any call or calls of the President of the United States for men to be mustered into the United States service or army.

11. That the several supposed causes of action, in the first twelve counts of the declaration mentioned, did not accrue within six years.

On motion to strike out the pleas, the court ordered that the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th pleas so as last above pleaded should be stricken out, and the 1st plea of nil debet should stand as far as applicable to the counts on the money orders. After the above pleas were stricken out the issues were joined on the following pleas:

1. Nil debet as to the 7th, 8th, 9th, 10th, 11th and 12th counts in the declaration.

2. Non est factum as to the first six counts in the declaration.

3. Actio non accrevit infra sex annos as to the first twelve counts in the declaration.

4. Nil debet to the last count of the declaration.

5. Actio non accrevit infra sex annos as to the last count in the declaration.

At the trial of the cause before the Circuit Court of the United States for the District of New Jersey, on the 29th of March, A. D. 1881, (See Bill of Exceptions, page 20 of Record, &c.) the plaintiff proved by Edward T. McKean that he signed the said several instruments as clerk and that they were signed by Timothy Henderson as President of the town committee, and the endorsement thereon of Samuel Crowley; by William P. Gallager, that he had endorsed his name thereon; by the plaintiff that he was the owner of the instruments; that he became the owner in the last part of 1864, or first part of 1865, by purchase from Crowley for value. The plaintiff offered in evidence a book produced (on call), by the defendant called the defendant's Bond Book and read therefrom the following heading, viz: "Issue of bonds by the township of Mullica in pursuance of a resolution adopted January 1, 1864," and from page 7 of the book, the following entries, viz.:

Date of Bond.	Number.	Amount.	To whom issued.	When due.
Dec'r. 31, 1864,	145	$500	Samuel Crowley,	Dec'r. 31, 1866.
"	146	1,000	"	"
"	147	1,000	"	"
"	148	1,000	"	"
"	149	1,000	"	"
"	150	1,000	"	"

The plaintiff also read in evidence the following acts of the Legislature of the State of New Jersey, viz.:

CHAPTER XCIX.

An act to legalize certain acts of the township of Mullica, in the county of Atlantic, relative to raising money to pay bounty to volunteers and to provide for the payment of the same.

WHEREAS, the inhabitants of the township of Mullica, in the county of Atlantic, did, on the first day of January, anno domini eighteen hundred and sixty-four, vote to pay a bounty of two hundred and twenty-five dollars to each person volunteering to fill the quota of said township under the calls of the President of the United States, (the said quota being thirty-four).

AND WHEREAS, The said inhabitants having no authority, under the laws of the state, to offer said bounty or borrow money for the payment of the same, therefore,

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the said township of Mullica be authorized to provide for the payment of said bounties, the sum of seven thousand six hundred and fifty dollars, and the interest thereon, by the issuing of their bonds, or township orders, bearing interest at the rate of six per centum per annum, and payable at such times as the township committee of said township may determine; *provided*, that not less than fifteen hundred nor more than twenty-five hundred dollars shall be raised for the purpose of paying said bonds or orders in any one year, including the interest thereon.

2. *And be it enacted*, That the said taxes authorized to be levied and collected by virtue of this act, shall be apportioned and raised in like manner as other taxes are raised in the said township.

3. *And be it enacted*, That the acts and doings of the township committee and of the inhabitants of the said township of Mullica, mentioned in the first section of this act, to raise seven thousand six hundred and fifty dollars, and the interest thereon, to pay bounties to volunteers as aforesaid, to fill the quota of the said township, are valid in all respects and binding upon the inhabitants and taxable property of said township.

4. *And be it enacted*, That this act shall take effet immediately, and shall be taken and held as a public act.

Approved March 4, 1864.

See pam. laws of New Jersey, for the year 1864, p. 158, &c. Also

CHAPTER CCCLXXXIX.

An Act to authorize the township of Mullica, in the county of Atlantic, to raise money to pay bounties, and to provide for the payment of the same.

WHEREAS, The inhabitants of the township of Mullica, in the county of Atlantic, are desirous of raising money to pay bounties to fill the quotas assigned the said township under the last call, or any future calls of the President of the United States;

AND WHEREAS, The inhabitants having no authority under the existing laws of the state to offer said bounties or provide for the payment of the same; therefore,

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the inhabitants of the said township of Mullica be authorized, at any legally called meeting of the voters of said township, to raise such sums of money as a majority of the voters present may determine, to pay bounties to fill the quotas assigned to said township as mentioned in the preamble of this act.

2. *And be it enacted*, That the said township of Mullica be authorized to provide for the payment of said bounties by the issuing of their bonds, bearing interest at the rate of six per centum per annum, and payable at such times as the township committee of said township of Mullica may determine; *provided*, that not less than fifteen hundred nor more than twenty-five hundred dollars shall be raised by taxation for the purpose of paying said bonds in any one year, including the interest thereon.

3. *And be it enacted*, That the taxes authorized to be levied and collected by virtue of this act shall be apportioned and raised in like manner as other taxes are raised in said township.

4. *And be it enacted*, That this act shall take effect immediately and shall be taken and held as a public act.

Approved April 8, 1864.

See pam. laws of New Jersey for year 1864, p. 679, &c.

At the trial, when the plaintiff rested, the jury, under the direction of the court, found their verdict for the defendant; and judgment was entered on said verdict.

This writ of error is brought to remove this judgment.

The errors assigned are:

1. That the learned Judge who tried the cause in the court below erred in overruling the plaintiff's offer of the bonds in suit.

2. That the court below erred in instructing the jury to find a verdict for the defendant.

This suit is brought to charge the defendant.

The inhabitants of the township of Mullica, in the county of Atlantic, a municipal corporation of the State of New Jersey, upon certain instruments, not executed in the name of, or by authority of the defendant, as appears by the face of the said instrument.

The inhabitants of the township of Mullica, in the county of Atlantic, was incorporated by an act of the legislature of the State of New Jersey, passed February 21, 1838, (see pam. laws of the State of New Jersey for year 1838, p. 95,) whereby it was enacted that said township should be entitled to all the rights, powers, privileges and advantages, and subject to the same regulations, duties and liabilities as by law are given to and prescribed for the several other townships in the county of Atlantic.

Townships in New Jersey were originally mere political divisions of the counties of the State, and in the early legislation of the State are styled in some of the counties precincts; in others towns and townships.

By an act of the legislature of the State of New Jersey entitled "An act incorporating the inhabitants of townships, designating their powers and regulating their meetings, passed February 21, 1798, the inhabitants of the townships, precincts and wards of the State therein named were constituted bodies politic and corporate in law."

See Paterson's Laws of New Jersey, A. D. 1799, p. 277.
Revised Laws of New Jersey, A. D. 1820, p. 323.
Revised Statutes of New Jersey, A. D. 1846, p. 1019.
Revision Laws of New Jersey, A. D. 1877, p. 1191, &c.

By this act, after making provisions for the holding of the annual town meetings of the corporations, and who should vote at such meetings, &c., it is enacted by Section 11, "That the persons qualified to vote at town meetings shall be and they are hereby empowered at their annual meetings, or at any other meeting duly held for the purpose, to vote, grant and raise such sum or sums of money, for the maintenance and support of the poor, the building and repairing of pounds, the opening, making, working and repairing of roads and keeping them in order, in such townships as are authorized to repair their highways by hire, the destruction of noxious wild animals and birds, for running and ascertaining the lines, and prosecuting or defending the common rights of such township, and for other necessary charges and legal objects and purposes thereof as are or shall be by law expressly vested in the inhabitants of the several townships of this state, by this or some other act of the legislature, which money so voted and granted shall be assessed, levied and collected by the same persons, in the same manner and under like fees, fines and penalties, as the money raised in such township by the board of chosen freeholders of the county shall be assessed, levied and collected, and at

such times and in such proportions as the said town meetings respectively shall direct and appoint; *provided*, that the said fines and penalties shall, when recovered, be paid to the clerk of the said township and be applied to the use of the said township in such manner as shall from time to time be directed and appointed at their annual meeting."

SEC. 12. "That the persons qualified to vote at town meetings shall have full power and authority at their respective annual meetings to elect for such township, by a majority of votes, one clerk, one or more assessor or assessors, provided no such township shall be thereby entitled to more than one vote in the board of assessors of the county, one or more collector or collectors, three or more judicious freeholders of good character to hear and finally determine all appeals relative to unjust assessments in cases of taxation, two freeholders commonly called chosen freeholders, two surveyors of the highways, one or more overseer or overseers of the poor, one or more constable or constables, and so many overseers of the highway and pound keepers as they shall seem necessary or convenient, and one reputable freeholder as a judge of elections, which said several officers shall hold their respective offices for one year and until others shall be chosen and legally qualified in their stead: and that in addition to the before mentioned officers the electors of every corporation, at their respective annual meetings as aforesaid, shall have full power and authority to elect five judicious freeholders, resident within the township, who shall be denominated the township committee, a majority of whom shall be a quorum, and shall continue in office one year and until others are chosen in their stead; which committee shall have authority, and it is hereby rendered their duty, to examine, inspect and report to the annual or other town meetings, the accounts and vouchers of the township officers, and to superintend the expenditure of any

moneys raised by tax for the use of the township, or which may arise from the balance of the accounts of any of the township officers; and provided that the several officers enumerated in this section may be elected by a plurality of votes in any annual town meeting which may resolve, or now are or hereafter may be required by law to vote by ballot."

SEC. 13. "That if any township shall neglect, at their annual town meeting, to choose any of the officers directed by law to be chosen, or if any of the officers so chosen in any township shall refuse to serve, or die, or remove out of the said township, or become incapable of serving before the next annual meeting, then it shall be lawful for the persons qualified to vote at town meetings to assemble together from time to time and hold town meetings for the purpose of supplying such vacancies; and in case of neglect of the electors for fifteen days after such omission to choose, or after the death, removal, refusal to serve, or inability of any township officer, the township committee shall, by writing, under their hands and seals, appoint a person to fill such vacancy until the next annual town meeting."

SEC. 14. "That the clerk of the township, upon notice of any such omission, refusal, removal, incapacity or death, or if the office of the clerk be vacant, then any justice of the peace of the county residing in the said township, upon notice thereof, shall give notice in the manner mentioned in the following section of a town meeting to be held in the same township for the purpose aforesaid."

SEC. 15. "That whenever it shall be necessary, in the opinion of the township committee, to hold a town meeting for any of the purposes specified in this or any other act, at any time between the annual meetings, it shall be the duty of the clerk of such township to give notice thereof in writing, under his hand, mentioning the time,

place and object or purpose of such meeting, to be fixed up at four or more of the most public places in the said township at least eight days before the time therein appointed for holding such meeting."

SEC. 16. "That the clerk of every township shall enter in a book, to be kept for the purpose, the names of the persons and the offices to which they are elected at town meetings, and the proceedings of such meeting, which shall be signed by the presiding officer of the meeting and attested by the clerk."

SEC. 17. "That the clerk of the township shall transmit to the clerk of the Court of Common Pleas of the county, a certified list of the names of the persons and the respective offices to which they are elected, and to put up true copies of such lists in three public places in the township."

SEC. 19. "That the clerk of the township, before he enters upon the execution of his office, should take and subscribe an oath that he would faithfully and honestly keep all the papers, writing, books and records by virtue of his office committed and which from time to time should be committed to him; and that he would in all things, to the best of his knowledge and understanding, perform the duties of said office of clerk without favor or partiality."

SEC. 20. "That upon the death or expiration of office of any clerk of any township, all papers, writings, books and records belonging to said office shall be delivered to the successor in office."

Subsequently and after the execution of the instruments on which this suit is brought, the legislature of the State of New Jersey, by an act entitled "An Act concerning townships and township officers," Approved April 14, 1876, (See Revision of Laws of New Jersey, A. D. 1877, p. 1202, § 50, &c.,) enacted among other things by

SEC. 2. "That township committees, when duly elected,

appointed and qualified, shall have power and authority to appoint one of their number to be the chairman of said committee, and one to be treasurer thereof; the chairman of said committee shall preside at all meetings thereof, and the clerk of the township shall act as clerk of said committee and keep a record of the proceedings and shall record the same in the town book."

SEC. 5. "That whenever it is deemed expedient to issue town or township bonds for any lawful purpose such bonds shall be issued by such committee and shall be signed by the chairman thereof, and countersigned by the treasurer, and numbered and registered by him in a book to be kept for that purpose; *provided*, such bonds should not be issued except upon certain conditions mentioned in said act and upon being authorized by a resolution of a majority of the legal voters of said township at a town meeting to be held in said township."

The only power of the defendant was that conferred by the statute, and in Mendham vs. Losey, 1 Pennington R., p. 347, 355, the court say "the vote of the meeting required the overseer to render his account under oath, and that this was not proved to be done. I am clearly of the opinion that the town meeting had no authority to require an oath. The whole of the proceedings are regulated by statute, and the town meeting had no power to alter or in any way change them."

In the State vs. Sickles, 4 Zab., 125, a case in which the legality of taxes assessed was examined, it appeared that at the annual town meeting the inhabitants voted to raise for roads, $500; for the poor, $500; for schools, all the law allows and ways and means left to the committee. The Town Committee, claiming to act under this authority, made an order to the assessor as follows: "You are hereby notified to assess $4,900 to defray current expenses of the township for the present year, for roads' bridges, paupers, public schools, and incidentals." The

court says: "As to the order of the Town Committee, it was wholly illegal and gave no authority to the assessor to increase the sum voted by the town meeting. The power vested in the inhabitants to order money to be raised by tax is in itself a delegated power and cannot be transferred to the Town Committee or any other officer. By law, the committee is empowered to examine, inspect and report to the annual or other town meetings, the accounts and vouchers of the township officers and to superintend the expenditure of any moneys raised by tax for the use of the township, or which may arise from the balance of the accounts of any of the township officers, (Revision, p. 1195, § 12), but has no power to order any money to be raised which is not specially voted by the town meeting. The inhabitants composing the town meeting have themselves no general power to vote money at their discretion, but are confined to raising it for such legal objects as are by law expressly vested in them, (Revision, 1194, § 11). A vote, therefore, to raise a specified sum for ways and means would be illegal. Much more was it unwarranted to confer a power on the committee to raise for ways and means such sum as they might deem expedient." To same effect—

State vs. Saalmann, 8 Vroom, 156, 159.

State vs. Koster, 9 Vroom, 309.

In Callahan vs. township of Morris, 1 Vroom, 160, 161, a suit brought by an overseer of the highway to recover money claimed to be expended by him in repairing the highways, under the direction or authority of the township committee, the court said: "The town committee has no common law power to bind the township; whatever powers they possess are derived from statutes."

In Demarest vs. Inhabitants of New Barbadoes, 11 Vroom, 604, 607, a suit brought by the township to recover illegal fees paid to a collector, with the approval or

consent of the township committee, in the Court of Errors it is said: "Having been paid with the approval of and on settlement with the township committee, can they be recovered in this suit? That they could not be recovered was contended for by the plaintiff in error, on the ground that they were voluntary payments by the committee, with full knowledge of the facts and without mistake or fraud; and upon the further ground that the committee in examining and passing upon the collector's accounts were judges and their judicial action cannot be impeached in this suit. Neither of these contentions can prevail. The powers of the township committee are only those conferred by statute. In Callahan vs. Morris, 1 Vroom, 160, they are held to have no common law authority to bind the township and the importance is adverted to of protecting the people against their own servants by confining them within the strict limits of the power conferred by law. By § 12 of the act respecting townships (Rev., p. 1195) it is enacted that they shall have authority, and it shall be their duty to examine, inspect and report to the annual or other town meetings the accounts and vouchers of the township officers, and superintend the expenditure of township moneys, * * * They were correctly held in this case to be auditors to examine, inspect and report—the clerks or servants of the corporation, and not its judges to hear, try and determine without notice. The committee and the collector both derive their powers solely from the legislature and each is presumed to know the limit of the powers possessed by the other. The committee are the agents of the township only so far as they act within the express provisions of the law. Payments made or sanctioned by them not authorized by legislative enactments are *ultra vires* outside of their agency and cannot bind their principals, the people."

In Musgrove vs. Kennell, 8, C. E. Gr., p. 75, it is said

"the township committee are not the corporation; the inhabitants of the township are the corporation and they act, not through the committee as managers or directors, but by vote of the inhabitants assembled in town meeting. By the twelfth section of the township act the town committee are to audit the accounts of the township officers and are to direct the expenditure of the money raised for township purposes, but they have no power to raise any tax or to bind the township by borrowing money."

In Hudson vs. Inhabitants of the township of Winslow, 6 Vroom, 437, 442, a suit brought on a township bond, on demurrer to the pleas of the defendant, the court say: "The defendants have no capacity to execute this writing except such as is conferred by the act of February 22, 1865," (that being a special act for said township). "The mode of executing the power thus conferred is prescribed. The inhabitants must be assembled according to law and the order to issue the bonds, &c., must be sanctioned by a vote of two-thirds of those present. Now, it seems to me very plain that the requisites of the statute must be complied with in order to give any force to the obligation now in controversy. To hold otherwise would be to say that the Township Committee, without any authority derived from the inhabitants, could issue these instruments, under the seal of the corporation. According to the argument addressed to us in behalf of the plaintiff, if such committeemen put forth one of these writings in the corporate name, with a recital that it was sanctioned by the requisite vote at a meeting legally called, the township is conclusively bound. I think such doctrine has no sanction in law When applied to the transaction of public corporations it would open the door to innumerable frauds, peculations and abuses of all kinds. The town rule is, that a corporate body can act only to the extent and in the

mode prescribed in the statute conferring the authority, and this rule should be applied with the utmost stringency to every grant of corporate functions for political purposes. This as a general rule has been long established. It was forty years ago enforced in the case of Leggett et al. vs. New Jersey Manufacturing and Banking Company, Saxt. 541, in which it was decided that a mortgage signed by the president and cashier, with the corporate seal affixed by them without authority or concurrence of the Board of Directors, is not a valid instrument. All the text books furnish long lines of authority to the same effect.

Ang. & Ames on Corp's, 229.

In the case in hand, if the bond in question had been issued without the sanction of two-thirds of the inhabitants of this township present at a meeting legally assembled, I have no doubt that it is not the deed of the defendants. Such a defense does not admit in any sense the legal entity of the deed, and the defendants can no more be debarred from pleading such defense on the ground of estoppel than they could be precluded from the ordinary plea of *non est factum*. Circumstances showing that the instrument sued on is not the act of the defendants destroy it for all purposes. The admission in an instrument, which the defendants offer to show is not in law their deed, cannot in any respect prejudice their right."

In The town of Hackettstown vs. Swackhamer, 8 Vroom, 191, it was held by the court as shown by the syllabus, "that municipal corporations in the absence of a specific grant of a power do not in general possess the capacity to borrow money. A note given by such corporation for an authorized loan cannot be enforced, even though the money borrowed has been expended for municipal purposes."

See also Knapp vs. Mayor, &c., 10 Vroom, 394, 398.

Montague vs. Church School Disct., 5 Vroom, 218.
Mayor vs. Ray, 19 Wall., 468.
Burroughs on Pub. Securities, p. 172, &c.

In Burroughs on Public securities, p. 584, it is said, "when the bond is one that could not be issued without legislative authority, such authority must be shown by way of recital."

See Kennard vs. Cass County, 3 Dillon Cir. Ct. Rep., 147.

Thayer vs. Montgomery Co., Ib. Ib., 389.

In Dillon on Municipal Bonds, p. 17, it is said, "There is no presumption in favor of the power to issue such securities especially on the part of quasi corporations, and it would seem to follow from that, if the bonds of such corporations contain no recital as to the authority for their issue, or their purpose, there would be no presumption in favor of their validity, and it would devolve on the holder to aver and show by evidence *aliunde* that the bonds were issued for some purpose authorized by statute."

See Mayor vs. Ray, 19 Wall., 468.
Police Jury vs. Britton, 15 Wall, 566.
Clairborne Co. vs. Brooks, 111 U. S. Rep., 400, 407.
Montague vs. Church School Disct., 5 Vroom, 218.
Morrison vs. Township of Bernards, 7 Vroom, 219.
Hackettstown vs. Swackhamer, 8 Vroom, 191.

In town of Coloma vs. Eaves, 92 U. S. Rep., 484, it is said on p. 491. "When legislative authority has been given to a municipality, or its officers, to subscribe for the stock of a railroad company and to issue municipal bonds in payment, but only on some precedent condition such as a popular vote favoring the subscription, and when it may be gathered from the legislative enactment that the officers of the municipality were invested with

power to decide whether the condition precedent had been complied with, their recital that it has been made in the bonds issued by them and held by a bona fide purchaser is conclusive of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal."

See Marcy vs. Township of Oswego, 92 U. S. Rep., 637.
Commissioners, &c., vs. Bolles, 94 U. S. Rep., 104.
Commissioners, &c., vs. Clark, Ib. Ib. 278.
County of Warren vs. Marcy, 97 U. S. Rep., 96.
School District vs. Stone, 106 U. S. Rep., 183.
Pana vs. Bowles, 107 U. S. Rep., 529.
Northern Bank vs. Porter Township, &c., 110 U. S. Rep., 608.
Dixon County vs. Field, 111 U. S. Rep., 83.
Clairborne County vs. Brooks, 111 U. S. Rep., 400.
Carroll County vs. Smith, 111 U. S. Rep., 556.

In the case of Carroll County vs. Smith, supra, it is said, (speaking of the recitals in a county bond,) "They contain no statement of an election called or held, or of the vote by which the issue of the bonds were authorized; they do not embody even a general statement that the bonds were issued in pursuance of the statute referred to. The utmost effect that can be given to them is, that of a statement that a subscription to the capital stock of the railroad company was authorized by the statute mentioned and that the sum mentioned in the bond was part of it. They serve simply to point out the particular laws under which the transaction may lawfully take place. They say nothing whatever as to any compliance with the requirements of the statute in respect to which the board of supervisors were authorized and appointed to determine and certify. They do not, therefore, within the rule of decision acted on by this court, constitute an estoppel which prevents inquiry into the alleged invalidity of the bonds."

In Clairborne Co. vs. Brooks, 111 U. S. Rep., p. 400, it is decided that "when the settled decisions of the highest court of a state have determined the extent and character of the power which its political and municipal organizations shall possess, the decisions are authoritative upon the courts of the United States."

It will be seen that the defendant, "The Inhabitants of the township of Mullica, in the county of Atlantic," was a municipal corporation of the State of New Jersey, with no powers except such as were given it by the legislature; that it could only act by a vote of the inhabitants assembled in town meeting; that the township committee were the mere clerks or servants of the corporation to audit its accounts, &c., and report to the meetings of the corporation, without authority to do any act to bind the corporation by raising tax or borrowing money, or authority to elect a president, treasurer or clerk, at the time of the execution of the instruments on which this action is brought; that there was no power in the said corporation, or in the said township committee, to elect a president, or a president or clerk of said town committee; that when the pretended bonds of a municipal corporation contain no recital as to the authority for their issue or their purpose there is no presumption in favor of their validity, and the holder in such case was bound to aver and show by evidence *aliunde* that the bonds were issued for some purpose authorized by statute. In this case the instruments (called in the declaration bonds and township orders) offered in evidence did not contain any statement or recital of any statutory authority to issue the same, or that the instruments were issued for any purpose authorized by statute. They purport to be made by "The township of Mullica, county of Atlantic, not by the defendant." They acknowledge an indebtedness of $1,000 to Samuel Crowley which they promise to pay in two years, with interest, and recite "the afore-

said sum of $1,000 having been borrowed of the said Samuel Crowley by order of said township committee, pursuant to a resolution passed January 1st, 1864." The attesting clause is "In witness whereof, the said township committee have caused this bond to be sealed with their seal and attested by the signatures of their president and clerk." The resolution referred to in the instrument appears to have been a resolution of the township committee. The seal appears to have been the seal of the township committee, not of the defendants. The instrument purports to be executed by the president and clerk of the said township committee, when, at the time of the execution of the said instrument, said committee were not authorized to elect a president, or have a president or clerk. There is nothing in the instrument to show, nor was there any evidence to show, that they were executed by, for, or on behalf of the defendant for the payment of the sum of $7,650 bounties, for which the defendant was authorized to issue bonds or township orders by the act of the legislature of the State of New Jersey, entitled "An act to legalize certain acts of the township of Mullica, in the county of Atlantic, relative to raising money to pay bounty to volunteers and to provide for the payment of the same," approved March 4, 1864, above set forth. This act was approved March 4, 1864; the instruments on which the action is brought are dated December 31, 1864, nearly ten months after the approval of the act of the legislature.

The bond book of the defendant, produced and offered in evidence, was headed "Issue of bonds by the township of Mullica, in pursuance of a resolution adopted January 1, 1864," but the instruments of the plaintiff were numbers 145 to 150, both inclusive, and were entered on the seventh page of the book. There was nothing to show they were connected with the heading of the book. It is not a probable fact that the defendants had issued 144

bonds to raise the sum of $2,150, which, with the sum of $5,500 mentioned in the instruments of the plaintiff, makes the sum of $7,650 voted by the resolution of January 1, 1864, and authorized by the act of March 4, 1864. There was no evidence to show that the payee mentioned in the instruments of the plaintiff was in any way the agent of the defendant. Nor was there any evidence to show that the seal to the instruments was the seal of the defendants.

Submit that the learned judge who tried the cause below did not err in overruling the plaintiff's offer of the bonds in suit.

This was an action of debt. The plaintiff counted on certain sealed instruments and averred in each count in said declaration that a true copy of such instrument was annexed to the declaration—which was done. After the special counts the plaintiff added to his declaration the common counts.

The suit was brought by the plaintiff, who was the assignee of Gallagher who was the assignee of Crowley, the payee of the instruments mentioned in the declaration. At the trial, (see Record, p. 20, last part of § 57), "by leave of the court the Narr. and bill of particulars are amended by adding averments that Crowley endorsed to Gallagher and Gallagher to plaintiff."

By the practice act, (see Revision of the laws of New Jersey, A. D., 1877, p. 884 §237), it is enacted that "The plaintiff or defendent may annex to his declaration or plea a schedule containing such particulars of demand and copies of such notes, bonds contracts, deeds, records or writings, on which the declaration, plea or notice is founded, and in such cases the adverse party shall not be at liberty to make the demand aforesaid" (that is a demand of a bill of particulars in writing,) "but the party so annexing the same shall be bound thereby unless in case

of surprise or for other good cause the court shall give relief, which they are hereby empowered to do."

In this case the bill of particulars annexed to the plaintiff's declaration was copies of the six instruments set out in the declaration. There were no particulars showing the consideration of the instruments, or any or either of them.

The rule in assumpsit is, if the plaintiff cannot substantiate in evidence the facts necessary to support the count in the bill or note, he may go into evidence of the consideration for which he received it, and may recover on the common counts if adapted to such consideration; *provided*, the bill of particulars of demand state the consideration of the bill or note, but this rule does not apply where there is no privity between the plaintiff and the defendant as between the indorsee and acceptor of a bill and the indorse and maker of a note.

1 Archb. Nisi Prius, p., [14, &c.]

1 Saund. Plead., & Evd., p. 495, Ed. of 1851.

Chitty on Bills, p. 578–583, Ed. of 1849.

The declaration in this case was in debt on sealed instruments, which must merge any right of action that might be claimed on the consideration.

Submit that under the pleadings and circumstances of this case the sealed instruments set forth in the declaration, and copies of which were annexed thereto, were not admissible to prove an indebtedness under the common counts in the declaration.

By the practice act, (see revision of Laws of New Jersey, A. D., 1877, p. 876, § 185,) it is enacted, "That it shall not be necessary to call the plaintiff when the jury returns to the bar to deliver their verdict; and the plaintiff shall have no right to submit to a non-suit after the jury have gone from the bar to consider of their verdict.' In this case the plaintiff had failed to prove his cause of

action set out in his declaration and bill of particulars, and was before the court without any evidence to support his action, and refused or neglected to accept a voluntary non-suit. There was no evidence produced by the plaintiff to show that the defendant had executed or could execute the instruments set out in the declaration and bill of particulars; that the moneys mentioned therein had ever been received by the defendant; that the payee mentioned in the said instruments was in any way the agent of or acting for the defendant, or showing any legal liability on the part of the defendant to be submitted to the jury. The direction of the court to the jury, given at the trial, to find a verdict for the defendant, seems to have been an inevitable result, in view of the proofs or want of proofs then before the court.

Submit that the court below did not err in instructing the jury to find a verdict for the defendant, and that there is no error shown in the record, and that the judgment should be in all things affirmed with costs.

PETER L. VOORHEES,
Atty. for Defendant in Error.